STATUTORY INSTRUMENTS

2025 No. 1175

INFRASTRUCTURE PLANNING

The Stonestreet Green Solar Order 2025

Made - - - - *22nd October 2025*

Coming into force *13th November 2025*

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

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

The Examining Authority, having considered the application together with the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 83(1)(**d**) of the 2008 Act made a report and recommendation to the Secretary of State.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(**e**) and has had regard to the documents and matters referred to in section 104(2)(**f**) of the 2008 Act (with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application).

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

PART 1

Preliminary

Citation and commencement

1. This Order may be cited as the Stonestreet Green Solar Order 2025 and comes into force on 13th November 2025.

Interpretation

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

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

(**a**) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of and Schedule 13 to, the Localism Act 2011 (c. 20).
(**b**) S.I. 2009/2264, 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. 2024/332.
(**c**) S.I. 2010/103, amended by S.I. 2012/635 and S.I. 2024/317.
(**d**) As amended by paragraph 29(1) and (3) of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
(**e**) S.I. 2017/572.
(**f**) Section 104(2) was amended by paragraph 49 of Schedule 13 to the Localism Act 2011 and section 58(5) of the Marine and Coastal Access Act 2009 (c. 23).
(**g**) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.
(**h**) As amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
(**i**) As amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
(**j**) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
(**k**) Ibid.
(**l**) 1961 c. 33.

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

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

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

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

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

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

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

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

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

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

"AMS" means the archaeological management strategy identified in the table in Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 41 (certification of plans, etc.);

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

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

"BESS" means a battery energy storage system used for the storage of electrical energy, consisting of containerised units distributed across the Order limits and, where installed, located as part of an inverter station;

"book of reference" means the document of that name identified in the table in Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 41 (certification of plans, etc.);

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

"BSMP" means a battery safety management plan;

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

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

"cable works" means works to place, retain and maintain underground electrical cables;

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

"CCTV" means a closed circuit television security system;

"CEMP" means a construction environmental management plan;

(**a**) 1965 c. 56, amended by Levelling-up and Regeneration Act 2023 (c. 55).
(**b**) 1980 c. 66.
(**c**) 1981 c. 66.
(**d**) 1984 c. 27.
(**e**) 1989 c. 29.
(**f**) 1990 c. 8.
(**g**) 1991 c. 22.
(**h**) 2008 c. 29.
(**i**) S.I. 2015/596 (as amended).
(**j**) 1971 c. 80.

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

"crown land plans" means the document of that name identified in the table in Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 41 (certification of plans, etc.);

"CTMP" means a construction traffic management plan;

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

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

"DC" means direct current;

"DC-DC converters" means electrical infrastructure to allow communication and transmission of electricity between the inverters and the BESS;

"DEMP" means a decommissioning environmental management plan;

"design principles" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 41 (certification of plans, etc.);

"DTMP" means a decommissioning traffic management plan;

"electrical cables" means—

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

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

"electronic transmission" means a communication transmitted—

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

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

"environmental statement" means the document of that name identified in the table in Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 41 (certification of plans, etc.);

"EPL 001 Limited" means EPL 001 Limited, company number 12444050, whose registered office is at 2nd Floor, Regis House, 45 King William Street, London EC4R 9AN;

"first export date" means the date on which the authorised development first exports electricity to the national grid on a commercial basis, but excluding the generation of electricity during commissioning and testing;

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

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

(**a**) 1988 c. 52.

“intermediate substations” means substations (other than the project substation) that aggregate the output of a number of inverter stations prior to transmission to the project substation;

“inverter station” means electrical infrastructure located within a bunded enclosure and comprising inverters, transformers and switchgear (either as separate units or containerised) and “inverter stations” shall be interpreted accordingly;

“land plans” means the document of that name identified in the table in Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 41 (certification of plans, etc.);

“LEMP” means a landscape and ecological management plan;

“local planning authority” means the local planning authority for the borough of Ashford;

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

“mounting structure” means a frame or rack used to host the solar PV panels, and “mounting structures” shall be interpreted accordingly;

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

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London, SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited’s railway undertaking;

“OMP” means an operational management plan;

“ONMMS” means an operational noise mitigation and monitoring scheme;

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

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

“OSWDS” means an operational surface water drainage strategy;

“outline BSMP” means the outline battery safety management plan identified in the table in Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the for the purposes of this Order in accordance with article 41 (certification of plans, etc.);

“outline CEMP” means the outline construction environmental management plan identified in the table in Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline CEMP for the purposes of this Order in accordance with article 41 (certification of plans, etc.);

“outline CTMP” means the outline construction traffic management plan identified in the table in Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline CTMP for the purposes of this Order in accordance with article 41 (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 41 (certification of plans, etc.);

“outline DTMP” means the outline decommissioning traffic management plan identified in the table in Schedule 14 (documents and plans to be certified) and which is certified by the

Secretary of State as the outline DTMP for the purposes of this Order in accordance with article 41 (certification of plans, etc.);

"outline LEMP" means the outline landscape and ecological management plan identified in the table in Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline LEMP for the purposes of this Order in accordance with article 41 (certification of plans, etc.);

"outline OMP" means the outline operational management plan identified in the table in Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline OMP for the purposes of this Order in accordance with article 41 (certification of plans, etc.);

"outline OSWDS" means the outline operational surface water drainage strategy identified in the table in Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline OSWDS for the purposes of this Order in accordance with article 41 (certification of plans, etc.);

"outline RoWAS" means the outline rights of way and access strategy identified in the table in Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline RoWAS for the purposes of this Order in accordance with article 41 (certification of plans, etc.);

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

"phase" means a defined section or part of the authorised development, the extent of which is shown in a scheme submitted to and approved by the local planning authority under requirement 3 (phases of authorised development) in Part 1 of Schedule 2 (requirements);

"project substation" means the main 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;

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

"RoWAS" means a rights of way and access strategy;

"Sellindge Substation" means the existing substation at Sellindge, Church Lane, Aldington, Ashford TN25 6AF, owned by National Grid and operated by UK Power Networks;

"site enabling works" means operations consisting of—

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

(b) site clearance and/or vegetation works;

(c) advanced planting works;

(d) archaeological investigations;

(e) environmental surveys;

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

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

(h) diversion and laying of services;

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

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

"solar PV panel" means a solar photovoltaic panel designed to convert solar irradiance to DC electrical energy fitted to a mounting structure, and "solar PV panels" shall be interpreted accordingly;

"statutory nature conservation body" means the appropriate nature conservation body as defined in regulation 5 of the Conservation of Habitats and Species Regulations 2017(**a**);

"statutory undertaker" means any person falling within section 127(8) (statutory undertakers' land) or section 138(4A) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act and includes a public communications provider as defined in section 151(1) (interpretation of chapter 1) of the Communications Act 2003(**b**) and an operator of an electronic communications code network as defined in paragraph 1(1) of Schedule 17 (minor and consequential amendments) to that Act;

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

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

"street works" means the works listed in article 10(1) (street works and temporary closure of streets and private means of access);

"streets, rights of way and access plans" means the document of that name identified in the table in Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 41 (certification of plans, etc.);

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

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

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

"traffic regulations measures plans" means the document of that name identified in the table in Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 41 (certification of plans, etc.);

"transformer" means electrical infrastructure used to transform electricity to a different voltage;

"UK Power Networks" means UK Power Networks Holdings Limited, company number 07290590, whose registered office is at Newington House, 237 Southwark Bridge Road, London, SE1 6NP and all wholly-owned subsidiary companies of UK Power Networks Holdings Limited;

"undertaker" means EPL 001 Limited or any person who for the time being has the benefit of this Order in accordance with articles 6 (benefit of the Order) and 7 (consent to transfer benefit of the Order);

"vegetation removal plan" means the document of that name identified in the table in Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 41 (certification of plans, etc.);

"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;

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

(**a**) S.I. 2017/1012.
(**b**) 2003 c. 21.
(**c**) "street authority" is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act 2015 (c. 7).
(**d**) Section 121A was inserted by paragraph 70 of Schedule 8 to the 1991 Act and subsequently amended by section 271 of the Greater London Authority Act 1999 (c. 29); section 1(6) of, and paragraphs 70 and 95 of Schedule 1 to, the Infrastructure Act 2015; and S.I. 1999/1920 and S.I. 2001/1400.

"works plans" means the document of that name identified in the table in Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 41 (certification of plans, etc.).

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictions are references to restrictive covenants over land which interfere with the interests or rights of another and are for the benefit of land which is acquired, or rights over which are acquired, under this Order.

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

(4) 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.

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

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

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

(8) This Order does not authorise the carrying out of any works which are likely to give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

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. 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.

Authorisation of use

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

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

Benefit of the Order

6.—(1) Subject to article 7 (consent to transfer benefit of the Order) the provisions of this Order have effect solely for the benefit of EPL 001 Limited, save for—

(a) Work No. 3 in relation to which the provisions of this Order have effect for the benefit of EPL 001 Limited and UK Power Networks; and

(b) Work No. 4 in relation to which the provisions of this Order have effect for the benefit of EPL 001 Limited, National Grid and UK Power Networks.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of the Order

7.—(1) Subject to paragraph (3), the undertaker may—

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

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

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

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

(a) the transferee or lessee is National Grid or UK Power Networks;

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

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

(i) no such claims have been made;

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

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

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

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

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

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

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

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

(c) the powers to be transferred or granted;

(d) pursuant to paragraph (8), 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.

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

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

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

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

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

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

Disapplication, application and modification of legislative provisions

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

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

(b) the provisions of the Neighbourhood Planning Act 2017(**a**) insofar as they relate to the temporary possession of land under articles 30 (temporary use of land for carrying out the authorised development) and 32 (temporary use of land for maintaining the authorised development) of this Order.

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

"(k) or for the carrying out or the maintenance of development which has been authorised by the Stonestreet Green Solar Order 2025.".

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

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

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

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

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

(6) Section 42 (certain future local Acts, etc., to be subject to the planning enactments, etc., except as otherwise provided) of the Local Government (Miscellaneous Provisions) Act 1976(**e**) will not apply to the extent that it would make provisions of this Order authorising the

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(**a**) 2017 c. 20.
(**b**) S.I. 1997/1160.
(**c**) 1967 c. 10. Section 9 was amended by section 4 of, and paragraph 141 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2013/755. There are other amendments to section 9 that are not relevant to this Order.
(**d**) S.I. 2010/948, amended by S.I. 2011/987. There are other amending instruments but none are relevant to this Order.
(**e**) 1976 c. 57. Section 42 was amended by section 15(6) of the Food and Environment Protection Act 1985 (c. 48).

construction, operation and maintenance and decommissioning of the authorised development subject to other provisions.

(7) Any enactment applying to land within, adjoining or sharing a common boundary with the Order limits has effect subject to the provisions of this Order.

Defence to proceedings in respect of statutory nuisance

9.—(1) Where proceedings are brought under section 82(1) (summary proceedings by 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) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) 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, maintenance, operation or decommissioning of the authorised development and that the nuisance is attributable to the carrying out or use of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(**b**); or

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

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

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

PART 3

Streets

Street works and temporary closure of streets and private means of access

10.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in the table in Schedule 4 (streets subject to street works) as is within the Order limits and may—

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

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

(c) place and keep apparatus in the street;

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

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

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

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

(**a**) 1990 c. 43.

(**b**) 1974 c. 40. Section 61(9) was amended by section 162 and paragraph 15 of Schedule 3 to the Environment Protection Act 1990 (c. 25). There are other amendments to 1974 Act which are not relevant to this Order.

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

(4) The undertaker, during and for the purposes of carrying out or operating the authorised development, may temporarily close, alter or divert any street or private means of access and may for any reasonable time—

(a) divert the traffic from the street and prevent access via the private means of access; and

(b) subject to paragraph (6), prevent all persons from passing along the street.

(5) Without limiting the scope of paragraph (4), the undertaker may use as a temporary working site any street or private means of access which has been temporarily closed, altered or diverted under the powers conferred by this article.

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

(7) The undertaker must restore any street that has been temporarily closed or altered pursuant to this article to the reasonable satisfaction of the street authority.

Power to alter layout, etc., of streets

11.—(1) The undertaker may for the purposes of the authorised development enter onto and permanently alter the layout of or carry out any works in the streets specified in column 2 of the table in Schedule 5 (alteration of streets) 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, enter onto and alter the layout of or carry out any works on any street whether or not within the Order limits and, without limitation on the scope of this paragraph, the undertaker may—

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

(b) make and maintain passing places;

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

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

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

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

(g) execute any works necessary to alter existing facilities for the management and protection of pedestrians.

(3) The undertaker must restore any street that has been temporarily altered pursuant to paragraph (2) to the reasonable satisfaction of the street authority.

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

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

Construction and maintenance of altered streets

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

(2) Those restoration works carried out pursuant to article 10(7) (street works and temporary closure of streets and private means of access) or 11(3) (power to alter layout, etc., of streets) must be completed to the reasonable satisfaction of the street authority and must be maintained by the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(3) 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.

(4) For the purposes of a defence under paragraph (3), 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.

(5) Paragraphs (1) to (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Use of private roads

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

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

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

Access to works

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

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

(b) with the 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) If the local planning authority receives an application for approval under paragraph 14(1)(b) and fails to notify the undertaker of its decision within 56 days of receiving the application, that authority will be deemed to have granted approval.

Agreements with street authorities

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

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

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

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

(d) the undertaking in the street of any of the works referred to in article 10 (street works and temporary closure of streets and private means of access), article 11 (power to alter layout, etc., of streets) and article 12 (construction and maintenance of altered streets);

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

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

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

(f) such works as the parties may agree.

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

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

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

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

Traffic regulation measures

16.—(1) Subject to the provisions of this article the undertaker may at any time for the purposes of, or in connection with, the construction or decommissioning of the authorised development, temporarily place traffic signs and signals in the extents of the roads specified in column 2 of the table in Schedule 7 (traffic regulation measures) and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 (powers and duties of authorities as to placing of traffic signs) of the 1984 Act and the Traffic Signs Regulations and General Directions 2016(**a**).

(2) Subject to the provisions of this article and without limitation to the exercise of the powers conferred by paragraph (1), the undertaker may make temporary provision for the 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 4

Public rights of way

Public rights of way – stopping up and vehicular use on public rights of way

17.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development—

(a) permanently stop up each of the public rights of way specified in columns 1 and 2 of Part 1 (public rights of way to be permanently stopped up for which a substitute is to be provided) of Schedule 8 (public rights of way) to the extent specified in column 3 of that Part of that Schedule;

(b) provide the substitute public rights of way described in column 4 of Part 1 (public rights of way to be permanently stopped up for which a substitute is to be provided) of Schedule 8 (public rights of way) between the specified terminus points and to the standard specified in the RoWAS for the relevant phase of the authorised development;

(c) temporarily close during the construction, operation and decommissioning of the authorised development each of the public rights of way specified in columns 1 and 2 of Part 2 (public rights of way to be temporarily closed for which a substitute is to be provided) of Schedule 8 (public rights of way) to the extent specified in column 3 of that Part of that Schedule;

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

(d) provide the substitute public rights of way described in column 4 of Part 2 (public rights of way to be temporarily closed for which a substitute is to be provided) of Schedule 8 (public rights of way) between the specified terminus points and to the standard specified in the RoWAS for the relevant phase of the authorised development for the period during which the relevant public right of way has been temporarily closed pursuant to paragraph 17(1)(c);

(e) temporarily close during the construction, operation and decommissioning of the authorised development public rights of way to the extent agreed with the relevant highway authority and provide substitute temporary public rights of way (for the period during which the relevant public right of way has been temporarily closed) between terminus points and on an alignment to be agreed with the relevant highway authority (in both respects agreement not to be unreasonably withheld or delayed);

(f) stop up each of the public rights of way specified in columns 1 and 2 of Part 3 (public rights of way to be permanently stopped up for which no substitute is to be provided) of Schedule 8 (public rights of way) to the extent specified in column 3 of that Part of that Schedule; and

(g) for any reasonable time, authorise the use of motor vehicles on classes of public rights of way where there is otherwise no public right to use motor vehicles.

(2) No public right of way may be stopped up or closed pursuant to paragraph (1)(a) or 17(1)(c) unless the respective substitute public right of way has first been provided pursuant to paragraph (1)(b) or 17(1)(d) to the reasonable satisfaction of the relevant highway authority.

(3) No public right of way may be closed pursuant to paragraph 17(1)(e) unless the substitute temporary public right of way agreed with the relevant highway authority has been provided to the reasonable satisfaction of the relevant highway authority.

(4) In respect of any permanent or temporary diversion route provided under paragraph (2) or any temporary diversion route agreed by the relevant highway authority under paragraph (3), the undertaker must provide appropriate clear signage of the permanently diverted or temporarily diverted route.

(5) Where a public right of way has been stopped up under this article—

(a) all rights of way over or along the public right of way are extinguished; and

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

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

Status of public rights of way created or improved

18. With effect from the date on which the highway authority has confirmed that the public rights of way specified in column 1 of Schedule 9 (status of public rights of way created or improved) have been created or improved to the standard specified in the RoWAS for the relevant phase of the authorised development, the public rights of way in question will be deemed to have the status specified in column 2 of that Schedule.

PART 5

Supplemental powers

Discharge of water

19.—(1) Subject to paragraphs (3) and (4) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation,

maintenance or decommissioning of the authorised development and for that purpose may lay down, take up and alter pipes and may on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

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

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

(a) in accordance with plans approved by the person to whom the sewer or drain belongs; and

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

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

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

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

(8) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to 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.

Authority to survey and investigate the land

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

(a) survey or investigate the land;

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

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

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

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

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

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

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

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

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

(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.

(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.

PART 6

Powers of acquisition and possession of land

Compulsory acquisition of land

21.—(1) The undertaker may—

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

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

(2) This article is subject to article 24 (time limit for exercise of authority to acquire land compulsorily), article 25 (compulsory acquisition of rights and imposition of restrictive covenants), article 28 (acquisition of subsoil and airspace only), article 30 (temporary use of land for carrying out the authorised development), article 40 (crown rights) and Schedule 13 (protective provisions).

Compulsory acquisition of land – incorporation of the mineral code

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

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

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

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

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

Statutory authority to override easements and other rights

23.—(1) The carrying out or use of development authorised by this Order and the doing of anything else authorised by this Order is authorised, including for the purpose specified in section 158(2) (nuisance: statutory authority) of the 2008 Act, notwithstanding that it involves—

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

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

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

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

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

authorised by virtue of this Order and the operation of section 158 (nuisance: statutory authority) of the 2008 Act.

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

(4) Section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act applies to paragraph (2) by virtue of section 152(5) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(5) Any rule or principle applied to the construction of section 10 (further provision as to compensation for injurious affection) of the 1965 Act applies to the construction of paragraph (2) (with any necessary modifications).

Time limit for exercise of authority to acquire land compulsorily

24. After the end of the period of five years beginning on the day on which this Order is made—

(a) no notice to treat may be served under Part 1 (Compulsory Purchase under Acquisition of Land Act of 1946) of the 1965 Act; and

(b) no declaration may be executed under section 4 (execution of declaration)(**a**) of the 1981 Act as applied by article 27 (application of the 1981 Act),

in relation to any part of the Order land.

Compulsory acquisition of rights and imposition of restrictive covenants

25.—(1) Subject to 25(2), the undertaker may acquire compulsorily such rights over the Order land or impose restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 21 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column 1 of Schedule 10 (land in respect of which only 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 such restrictive covenants as may be required for the purpose specified in relation to that land in column 2 of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) of the 1965 Act, where the undertaker creates or acquires an existing right over land or the benefit of a restrictive covenant under paragraph (1), the undertaker will not be required to acquire a greater interest in that land.

(**a**) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Sections 10 and 11 and Schedule 1 were amended by S.I. 2009/137. Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.

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

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

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

(7) This article is subject to article 40 (crown rights).

Private rights

26.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under article 21 (compulsory acquisition of land) will be extinguished—

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

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

whichever is the earlier.

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

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

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

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order will be 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 where article 33 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

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

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

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

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

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

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

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

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

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

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

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

Application of the 1981 Act

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

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

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

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

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

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

(6) In section 5B(1) (extension of time limit during challenge)(**b**)—

(a) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008"; and

(b) for "the applicable period for the purposes of section 5A" substitute "the five year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily) of the Stonestreet Green Solar Order 2025".

(7) In section 6 (notices after execution of declaration)(**c**) for subsection (1)(b) substitute—

"(1)(b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008.".

(8) In section 7 (constructive notice to treat)(**d**), in subsection (1)(a), omit "(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)(**a**), omit paragraph 1(2).

(**a**) 1981 c. 66. Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22) and amended by section 185(3)(a) of the Levelling-up and Regeneration Act 2023 (c. 55).

(**b**) 1981 c. 66. Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22) and amended by section 185(3)(b) of the Levelling-up and Regeneration Act 2023 (c. 55).

(**c**) 1981 c. 66. Section 6 was amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(**d**) 1981 c. 66. Section 7 was amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

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

Acquisition of subsoil and airspace only

28.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of and the airspace over the land referred to in paragraph 21(1) of article 21 (compulsory acquisition of land) or article 25 (compulsory acquisition of rights and imposition of restrictive covenants) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace 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) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

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

Modification of Part 1 of the 1965 Act

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

(a) in section 4 (time limit for giving notice to treat)(**b**) for "after the end of the applicable period beginning with the day on which the compulsory purchase order becomes operative" substitute "after the end of the period stated in article 24 (time limit for exercise of authority to acquire land compulsorily) of the Stonestreet Green Solar Order 2025".

(b) in section 4A(1) (extension of time limit during challenge)(**c**) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the applicable period for the purposes of section 4" substitute "section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily) of the Stonestreet Green Solar Order 2025"

(2) In section 11A (powers of entry: further notice of entry)(**d**)—

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

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

(3) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for "section 4 of this Act" substitute "article

(**a**) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).
(**b**) 1965 c. 56. Section 4 was amended by section 185(2)(a) of the Levelling-up and Regeneration Act 2023 (c. 55).
(**c**) 1965 c. 56. Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22) and amended by section 185(2)(b) of the Levelling-up and Regeneration Act 2023 (c. 55).
(**d**) 1965 c. 56. Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

24 (time limit for exercise of authority to acquire land compulsorily) of the Stonestreet Green Solar Order 2025".

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

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

"(2) But see article 28(3) (acquisition of subsoil and airspace only) of the Stonestreet Green Solar Order 2025, which excludes the acquisition of subsoil and airspace only from this Schedule"; and

(b) after paragraph 29, insert—

"PART 4

Interpretation

30. In this Schedule, references to entering on and taking possession of land do not include doing so under articles 20 (authority to survey and investigate the land), 30 (temporary use of land for carrying out the authorised development), 32 (temporary use of land for maintaining the authorised development), or 38 (use of subsoil and airspace within the Order limits) of the Stonestreet Green Solar Order 2025."

Temporary use of land for carrying out the authorised development

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

(a) enter on and take temporary possession of any land within the Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act(**a**));

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

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

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

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

(f) carry out mitigation works required under the requirements.

(2) 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.

(3) The undertaker may 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 under this article after the end of the period of one year beginning with the date of completion of the part of the authorised development which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 (powers of entry) of the 1965 Act or made a declaration under section 4 (execution of declaration) of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must either acquire the land or, unless otherwise agreed with the owners

(**a**) 1981 c. 66. Section 4 was amended by section 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).

of the land, remove all works and restore the land to the reasonable satisfaction of the owners of the land, except that the undertaker is not required to—

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

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

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

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

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

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

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

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article and, for the avoidance of doubt, this will include compensation in respect of any loss or damage further to any ground strengthening works within paragraph (4)(e) carried out by the undertaker in or on that land.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, will be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) Any dispute as to the satisfactory removal of works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land.

(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(**a**) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (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 specified in paragraph (1).

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

31.—(1) Subject to paragraph (2), the authority to enter onto land pursuant to article 30 (temporary use of land for carrying out the authorised development) ceases to apply to any land after the period of five years beginning on the day on which the Order is made.

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

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

Temporary use of land for maintaining the authorised development

32.—(1) Subject to paragraph (2), at any time during the maintenance period (as defined in paragraph (12)) relating to any part of the authorised development, the undertaker may—

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

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

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

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

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

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

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

(4) The undertaker is not required to serve notice under paragraph (2) where the undertaker has identified a potential risk to the safety of—

(a) the authorised development or any of its parts;

(b) the public; or

(c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practicable in the circumstances.

(5) 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.

(6) 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.

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

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

(9) Nothing in this article affects any liability to pay compensation under section 10(2) (further provisions as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (7).

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

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

(12) In this article the "maintenance period" means the period of five years beginning with the first export date of the part of the authorised development for which temporary possession is required under this article except in relation to landscaping works where "the maintenance period" means such period as set out in the LEMP which is approved by the local planning authority

pursuant to requirement 8 beginning with the date on which that part of the landscaping works are completed.

Statutory undertakers

33. Subject to the provisions of Schedule 13 (protective provisions), the undertaker may—

(a) acquire compulsorily the land belonging to statutory undertakers within the Order land and described in the book of reference;

(b) acquire compulsorily existing rights, create and acquire new rights and impose restrictive covenants over the land belonging to statutory undertakers within the Order land and described in the book of reference;

(c) extinguish or suspend the rights of, remove, alter, renew, relocate or reposition the apparatus belonging to statutory undertakers over or within the Order land; and

(d) construct the authorised development in such a way as to interfere with any highway or cross underneath or over apparatus belonging to statutory undertakers and other like bodies within the Order land.

Acquisition of wayleaves, easements and other rights

34. Schedule 12 (acquisition of wayleaves, easements and other rights) has effect.

Recovery of costs of new connections

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

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

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

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

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

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

(4) In this article—

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

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

No double recovery

36. Compensation will not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Protective provisions

37. Schedule 13 (protective provisions) has effect.

Use of subsoil and airspace within the Order limits

38.—(1) The undertaker may enter on, appropriate and use so much of the subsoil of or airspace over any land (including without limitation any street) within the Order limits as may be required for the authorised development and may use the subsoil or airspace for those purposes or any other purposes ancillary to the authorised development.

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

(3) Paragraph (1) does not apply in relation to—

(a) any subway or underground building; or

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

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

(5) Compensation is not payable under paragraph (3) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

PART 7

Miscellaneous and general

Operational land for the purposes of the 1990 Act

39. 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.

Crown rights

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

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

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

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

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

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

Certification of plans, etc.

41.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in the table in Schedule 14

(documents and plans to be certified) for certification that they are true copies of the documents referred to in this Order.

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

Service of notices

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

(a) by post;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Felling or lopping of trees or removal of hedgerows

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

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

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

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

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

(4) The undertaker may for the purposes of the authorised development—

(a) remove those parts of the important hedgerows within the Order limits and specified in Part 1 (removal of important hedgerows) of Schedule 15 (hedgerows); and

(b) remove those parts of the hedgerows as are within the Order limits and specified in Part 2 (removal of hedgerows) of Schedule 15 (hedgerows).

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

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

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

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

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

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

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

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

Arbitration

44.—(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 16 (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.

45.—(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 the Order (not including the requirements), such agreement or approval must, if given, be given in writing and must not be unreasonably withheld or delayed.

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

Application of landlord and tenant law

46.—(1) This article applies to—

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

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

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

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

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

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

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

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

Guarantees in respect of payment of compensation

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

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

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

(2) The provisions are—

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

(b) article 25 (compulsory acquisition of rights and imposition of restrictive covenants);

(c) article 26 (private rights);

(d) article 28 (acquisition of subsoil and airspace only);

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

(f) article 32 (temporary use of land for maintaining the authorised development); and

(g) article 33 (statutory undertakers).

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

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

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

Vicky Dawe
Deputy Director Energy Infrastructure Planning
22nd October 2025 Department for Energy Security and Net Zero

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In the district of Ashford and in the county of Kent, a nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act and associated development under section 115(1)(b) of the 2008 Act.

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

Work No. 1

1. A ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including—

(a) solar PV panels; and

(b) mounting structures,

along with associated development within the meaning of section 115(2) of the 2008 Act including—

Work No. 2

2. Balance of system and BESS works including—

(a) inverter stations;

(b) BESS;

(c) DC-DC converters;

(d) intermediate substations;

(e) fire hydrants;

(f) bunding and other water retention features; and

(g) acoustic barriers;

Work No. 3

3. Project substation and associated works including—

(a) project substation, including switchroom and control room buildings, circuit breakers, 132 kilovolt bus-bars, pad mounted transformers, earthing circuits, office facilities (to include welfare unit, water closet, cesspit) and ancillary equipment;

(b) monitoring and control systems for Work No. 1, Work No. 2 and Work No. 3;

(c) car parking;

(d) metal palisade security fencing with gates;

(e) access track with separate access provision;

(f) geotechnical works and retaining structures;

(g) drainage and water retention system works;

(h) acoustic barriers; and

(i) two spare parts storage containers;

Work No. 4

4. Works to lay high voltage electrical cables and to extend Sellindge Substation to facilitate grid connection including—

(a) laying of electrical cables to connect Work No. 3 to Sellindge Substation, including tunnelling, boring, open cut trenching and horizontal directional drilling works for trenchless crossings;

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

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

(d) crossing of Network Rail infrastructure either—

(i) using existing electrical ducts; or

(ii) through the installation of new cable ducts;

(e) laying down of internal access tracks, ramps, means of access, footpaths, roads, landscaping and vegetation management, signage, information boards and temporary secured construction laydown areas; and

(f) extension of the Sellindge Substation including—

(i) installation of new or amended structures, including outdoor air insulated switchgear or indoor gas insulated switchgear, circuit breakers, disconnectors, earth switches, bus-bars, steel supports and ancillary electrical infrastructure;

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

(iii) construction of a retaining wall, landscaping and vegetation management, signage, information boards and temporary construction laydown areas;

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

(v) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, and communication infrastructure; and

(vi) drainage works;

Work No. 5

5. Works including—

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

(b) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, a fence detection system, cameras, weather stations, and communication infrastructure;

(c) laying of electrical cables, including but not limited to electrical cables connecting Work No. 1, Work No. 2 and Work No. 3, including works to allow electrical cables crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways;

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

(e) laying down of internal access tracks (including fire access tracks), improvement of existing tracks, ramps, means of access, and roads, including construction signage and information boards;

(f) provision of water tanks and pipework connection to hydrants located at inverter stations where BESS installed; and

(g) equipment and materials storage during construction and decommissioning phases;

Work No. 6

6. Works to provide site access including—

(a) creation of accesses from the highway;

(b) creation of visibility splays;

(c) upgrading and repairing of existing accesses; and

(d) highways improvements;

Work No. 7

7. Construction and decommissioning works including—

(a) compound areas including hardstanding, turning and loading areas, car parking, offices/welfare facilities, storage areas, waste skip areas, solar PV panel testing area, bunded area for storage of fuels and hydrocarbons, security fencing and hoarding; and

(b) an internal haulage road comprising temporary permeable ground protection mats including passing bays, means of access, and signage;

Work No. 8

8. Works to create, enhance and maintain green infrastructure, boundary treatments and crossing structures including—

(a) landscape and biodiversity enhancement measures, including habitat creation and management and seating;

(b) mitigation and biodiversity enhancement planting;

(c) landscape reinforcement works;

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

(e) works to alter, maintain, repair or replace existing crossing structures over non-navigable rivers and other watercourses and drains; and

Site Wide Works

9. In connection with and in addition to Work Nos. 1 to 8, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the authorised development and which are within the Order limits and fall within the scope of work assessed by the environmental statement including—

(a) site preparation works and site clearance, including vegetation removal;

(b) earthworks;

(c) remediation of contamination;

(d) alteration to locations of services and utilities infrastructure;

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

(f) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;

(g) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;

(h) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way; and

(i) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management.

SCHEDULE 2

Article 2

REQUIREMENTS

PART 1

REQUIREMENTS

Time limit

1. The authorised development must not be commenced after the expiration of five years beginning with the date on which this Order comes into force.

Expiry of development consent

2.—(1) The authorised development must cease generating electricity on a commercial basis no later than the 40th anniversary of the first export date.

(2) Confirmation of the first export date must be provided by the undertaker to the local planning authority within one month of its occurrence.

Phases of authorised development

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

(2) The authorised development must be carried out in accordance with the phasing scheme approved pursuant to sub-paragraph (1).

Detailed design approval

4.—(1) No phase of the authorised development may be commenced until written 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) power and communications cables and pipelines;

(i) fencing and other means of enclosure;

(j) security measures; and

(k) acoustic barriers,

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

(2) The written details that are submitted for approval pursuant to sub-paragraph (1) must accord with the design principles.

(3) The authorised development must be carried out in accordance with the details approved pursuant to sub-paragraph (1).

Battery safety management plan

5.—(1) Prior to the commencement of the BESS within Work No. 2, a BSMP must be submitted to and approved by the local planning authority in consultation with the Environment Agency and Kent Fire and Rescue Service.

(2) The submitted BSMP must either accord with the outline BSMP or detail such changes as the undertaker considers are required.

(3) The BSMP must be implemented as approved and maintained in accordance with the BSMP thereafter.

Construction environmental management plan

6.—(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, such approval to be in consultation with the relevant statutory nature conservation body, Environment Agency and Kent County Council.

(2) The CEMP for each phase of the authorised development must be in accordance with the outline CEMP.

(3) All construction works associated with the authorised development in each phase must be carried out in accordance with the approved CEMP for that phase.

Construction traffic management plan

7.—(1) No phase of the authorised development may commence until a CTMP for that phase has been submitted to and approved by the local planning authority, such approval to be in consultation with the relevant highway authority.

(2) The CTMP for each phase of the authorised development must be in accordance with the outline CTMP.

(3) All construction works associated with the authorised development in each phase must be carried out in accordance with the approved CTMP for that phase.

(4) For the purposes of this requirement, "relevant highway authority" means the highway authority for the highways that are the subject of a CTMP submitted pursuant to sub-paragraph (1).

Landscape and biodiversity

8.—(1) The authorised development must not commence until a biodiversity design strategy has been submitted to and approved by the local planning authority, such approval to be in consultation with the Environment Agency, Kent County Council and the relevant statutory nature conservation body.

(a) The biodiversity design strategy must include details of how the strategy will secure a biodiversity net gain for all of the authorised development during the operation of the authorised development of at least 100% in area-based habitat units, at least 10% in hedgerow units, and at least 10% in watercourse units; calculated using the biodiversity metric published by the Department for Environment, Food & Rural Affairs on 12 February 2024, or such other biodiversity metric approved by the relevant planning authority in consultation with the relevant statutory nature conservation body.

(b) The biodiversity design strategy must be substantially in accordance with the outline LEMP, must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

(2) No phase of the authorised development may commence until a LEMP covering that phase has been submitted to and approved by the local planning authority.

(3) The LEMP for each phase of the authorised development must—

(a) be in accordance with the outline LEMP, the biodiversity design strategy approved pursuant to sub-paragraph (1) and the design principles;

(b) provide details of the proposed hard and soft landscape and biodiversity enhancement works including (in so far as is relevant)—

(i) surveys, assessments and method statements;

(ii) location, number, species, size, plant protection measures and planting density of any proposed planting and the location of areas to be seeded;

(iii) cultivation, importing of materials and other operations to ensure plant establishment; and

(iv) implementation timetables for all landscape and biodiversity enhancement works; and

(c) provide details of how the landscape and biodiversity enhancement measures will be managed and maintained during the operation of the authorised development.

(4) All landscape and biodiversity enhancement works associated with the authorised development in each phase must be carried out in accordance with the approved LEMP for that phase.

(5) For the purposes of sub-paragraph (2), "commence" includes part (b) (site clearance and/or vegetation works) of the site enabling works.

Archaeology

9.—(1) No phase of the authorised development may commence until the details specified in sub-paragraph (2) for that phase have been submitted to and approved by the local planning authority, such approval to be in consultation with Kent County Council.

(2) The details for each phase to be submitted pursuant to sub-paragraph (1) must—

(a) include a written scheme for the investigation of areas of archaeological interest within that phase;

(b) identify any areas where a programme of archaeological investigation is required within that phase and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found; and

(c) be generally in accordance with the AMS.

(3) Any archaeological works or programme of archaeological investigation carried out pursuant to the details approved under sub-paragraph (1) must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute.

(4) Any archaeological works or programme of archaeological investigation for a phase of the authorised development must be carried out in accordance with the details approved pursuant to sub-paragraph (1) for that phase.

Public rights of way

10.—(1) No phase of the authorised development incorporating any part of a public right of way which is to be temporarily closed or permanently stopped up pursuant to article 17 (public rights of way – stopping up and vehicular use on public rights of way) may commence until a RoWAS for the phase has been submitted to and approved by the local planning authority, such approval to be in consultation with Kent County Council.

(2) The RoWAS submitted pursuant to sub-paragraph (1) must—

(a) include details of measures to minimise the distance of any sections of the public right of way to be temporarily closed or permanently stopped up;

(b) include details of advance publicity and signage in respect of any sections of public rights of way to be temporarily closed or permanently stopped up; and

(c) be generally in accordance with the outline RoWAS.

(3) The RoWAS for each phase of the authorised development must be implemented as approved and maintained for that phase.

Operational surface water drainage strategy and flood compensation storage

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

(a) an OSWDS for that phase has been submitted to and approved by the local planning authority, such approval to be in consultation with the Environment Agency and the lead local flood authority; and

(b) a detailed floodplain compensation scheme for that phase has been submitted to and approved by the local planning authority, such approval to be in consultation with the Environment Agency.

(2) The OSWDS for each phase of the authorised development must be in accordance with the outline OSWDS.

(3) The OSWDS for each phase of the authorised development must be implemented as approved.

(4) When considered as a whole across all phases of the authorised development, the detailed floodplain compensation schemes approved pursuant to paragraph (1)(b) must include mitigation measures that are in accordance with the measures described in Appendix 10.2: Flood Risk Assessment of the environmental statement relating to flood storage upstream and downstream of the Aldington Flood Storage Area embankment.

(5) The detailed floodplain compensation scheme for each phase of the authorised development must be implemented and maintained as approved.

Operational management plan

12.—(1) Prior to the operation of the authorised development, an OMP must be submitted to and approved by the local planning authority, such approval to be in consultation with the relevant statutory nature conservation body and the Environment Agency.

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

(3) The OMP must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the OMP relates.

Operational noise mitigation and monitoring scheme

13. (1) Prior to the operation of Work No. 2 or Work No. 3, an ONMMS must be submitted to and approved by the local planning authority.

(2) The ONMMS must—

(a) include details of the plant specification, noise mitigation measures and monitoring procedures; and

(b) demonstrate that, with those noise mitigation measures and monitoring procedures in place, the authorised development is not likely to result in any materially new or materially different noise effects from those assessed in Volume 2, Chapter 14 (Noise) of the environmental statement.

(3) The ONMMS must be implemented as approved.

Decommissioning and site restoration

14.—(1) Decommissioning works must commence no later than the 40th anniversary of the first export date.

(2) Prior to commencement of any decommissioning works for any part of the authorised development—

(a) a DEMP for that part must be submitted to and approved by the local planning authority, such approval to be in consultation with the relevant statutory nature conservation body, the Environment Agency and Kent County Council; and

(b) a DTMP for that part must be submitted to and approved by the local planning authority, such approval to be in consultation with the relevant highway authority.

(3) The DEMP must be in accordance with the outline DEMP and the DTMP must be in accordance with the outline DTMP.

(4) The DEMP and DTMP must be implemented as approved for the relevant part of the authorised development.

(5) For the purposes of this paragraph, "relevant highway authority" means the highway authority for the highways that are the subject of a DTMP submitted pursuant to paragraph 14(2)(b).

Requirement for written approval

15. Where the approval, agreement or confirmation of the Secretary of State, the 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 the documents certified in accordance with article 41 (certification of plans, etc.) and any plans, details or schemes which have been approved pursuant to any requirement (together the "Approved Documents, Plans, Details or Schemes"), the undertaker may submit to the local planning authority for approval any amendments to any of the Approved Documents, Plans, Details or Schemes and, following approval by the local planning authority, the relevant Approved Documents, Plans, Details or Schemes is to be taken to include the amendments as so approved pursuant to this paragraph.

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

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

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

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

(b) where further information is requested under paragraph 18 the day immediately following that on which the further information has been supplied by the undertaker, or such longer period as may be agreed in writing by the undertaker and the local planning authority.

(2) In determining any application made to the local planning authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, the local planning authority may—

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

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

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

Further information regarding requirements

18.—(1) In relation to any application referred to in paragraph 17, the local planning authority may request such further information from the undertaker as it considers necessary to enable it to consider the application.

(2) In the event that the local planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the local planning authority must, within 20 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the local planning authority must issue the consultation to the requirement consultee within 10 business days of receipt of the application, and must notify the undertaker in writing specifying any further information the local planning authority considers necessary or that is requested by the requirement consultee within 10 business days of receipt of such a request and in any event within 20 business days of receipt of the application (or such other period as is agreed in writing between the undertaker and the local planning authority).

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

(5) Where further information is requested under this paragraph in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraphs 17 and 18.

Appeals

19.—(1) Where the undertaker makes an application to the local planning authority, the undertaker may appeal to the Secretary of State in the event that—

(a) the local planning 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 local planning authority does not determine such an application within the time period set out in paragraph 17(1), or grants it subject to conditions;

(c) on receipt of a request for further information pursuant to paragraph 18 of this Part of this Schedule, the undertaker considers that either the whole or part of the specified information requested by the local planning authority is not necessary for consideration of the application; or

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

(2) The appeal process is as follows—

(a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the time period set out in paragraph 17(1), giving rise to the appeal referred to in sub-paragraph (1);

(b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the local planning 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 local planning 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 ten business days of the start date specified by the appointed person and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

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

(f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable after the end of the ten day period for counter—submissions under 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 ten business days of the date specified by the appointed person, but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (2)(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 local planning authority (whether the appeal relates to that part of it or not), and may deal with the application as if it had been made to 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) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the local planning authority, the reasonable costs of the appointed person are to be met by the undertaker.

(11) On application by the local planning authority or the undertaker, 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 the guidance on costs in the Planning Practice Guidance or any official circular or guidance which may from time to time replace it.

SCHEDULE 3

Article 8

LEGISLATION TO BE DISAPPLIED

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

(a) County of Kent Act 1981(**a**);

(b) Kent County Council (Filming on Highways) Act 2010(**b**);

(c) Kent Water Act 1955(**c**);

(d) South Eastern Railway Act 1836(**d**);

(e) South Eastern Railway Act 1839(**e**); and

(f) Southern Water Authority Act 1988(**f**).

(**a**) 1981 c. 18.
(**b**) 2010 c. 4.
(**c**) 1955 c. 11.
(**d**) 1836 c. 75.
(**e**) 1839 c. 42.
(**f**) 1988 c. 33.

SCHEDULE 4

Article 10

STREETS SUBJECT TO STREET WORKS

(1) Area	*(2) Street*	*(3) Description of the street works*
Ashford Borough Council	Public right of way FNR-1 (AE385 Section 1 diversion)	Cable works beneath the width of the public right of way for the length shown in brown on sheet 1 of the streets, rights of way and access plans, reference SW-1.
Ashford Borough Council	Public right of way FN-AE380	Cable works beneath the width of the public right of way for the length shown in brown on sheet 1 of the streets, rights of way and access plans, reference SW-2.
Ashford Borough Council	Public right of way AE396 (Byway Open To All Traffic)	Cable works beneath the width of the public right of way for the length shown in brown on sheets 1 and 2 of the streets, rights of way and access plans, reference SW-6.
Ashford Borough Council	Public right of way FNR-3 (AE370 diversion)	Cable works beneath the width of the public right of way for the length shown in brown on sheets 1 and 2 of the streets, rights of way and access plans, references SW-5, SW-7 and SW-8.
Ashford Borough Council	Public right of way FNR-4 (AE377 diversion)	Cable works beneath the width of the public right of way for the length shown in brown on sheets 1 and 2 of the streets, rights of way and access plans, reference SW-9.
Ashford Borough Council	Public right of way FNR-5 (AE378 diversion)	Cable works beneath the width of the public right of way for the length shown in brown on sheet 2 of the streets, rights of way and access plans, references SW-10, SW-11 and SW-12.
Ashford Borough Council	Public right of way FN-7	Cable works beneath the width of the public right of way for the length shown in brown on sheets 2 and 3 of the streets, rights of way and access plans, reference SW-13.
Ashford Borough Council	Public right of way FNR-8 (AE431 diversion)	Cable works beneath the width of the public right of way for the length shown in brown on sheets 2 and 3 of the streets, rights of way and access plans,

		references SW-15 and SW-16.
Ashford Borough Council	Public right of way FNR-9 (AE436 diversion)	Cable works beneath the width of the public right of way for the length shown in brown on sheets 2 and 3 of the streets, rights of way and access plans, reference SW-18.
Ashford Borough Council	Public right of way FN-1	Cable works beneath the width of the public right of way for the length shown in brown on sheets 2 and 3 of the streets, rights of way and access plans, reference SW-19.
Ashford Borough Council	Public right of way AE657	Cable works beneath the width of the public right of way for the length shown in brown on sheets 2 and 3 of the streets, rights of way and access plans, reference SW-17A.
Ashford Borough Council	Public right of way FN-AE657	Cable works beneath the width of the public right of way for the length shown in brown on sheets 2 and 3 of the streets, rights of way and access plans, reference SW-17B.
Ashford Borough Council	Public right of way FN-3	Cable works beneath the width of the public right of way for the length shown in brown on sheet 3 of the streets, rights of way and access plans, reference SW-21.
Ashford Borough Council	Public right of way FNR-12 (AE657 and AE656 diversion)	Cable works beneath the width of the public right of way for the length shown in brown on sheet 3 of the streets, rights of way and access plans, reference SW-22.
Ashford Borough Council	Public right of way AE474	Cable works beneath the width of the public right of way for the length shown in brown on sheet 4 of the streets, rights of way and access plans, reference SW-23.
Ashford Borough Council	Public right of way AE475	Cable works beneath the width of the public right of way for the length shown in brown on sheet 4 of the streets, rights of way and access plans, reference SW-24.
Ashford Borough Council	Public right of way FNR-10 (AE454 diversion)	Cable works beneath the width of the public right of way for the length shown in brown on sheet 4 of the streets, rights of way and access plans, reference SW-25.
Ashford Borough Council	Public right of way FNR-11	Cable works beneath the width

	(AE475 diversion)	of the public right of way for the length shown in brown on sheet 4 of the streets, rights of way and access plans, reference SW-26.
Ashford Borough Council	AE656	Cable works beneath the width of the public right of way for the length shown in brown on sheet 5 of the streets, rights of way and access plans, reference SW-28.
Ashford Borough Council	Laws Lane	Cable works beneath the width of the street for the length shown in brown on sheet 6 of the streets, rights of way and access plans, reference SW-3.
Ashford Borough Council	Bank Road	Cable works beneath the width of the street for the length shown in brown on sheets 6 and 7 of the streets, rights of way and access plans, reference SW-4.
Ashford Borough Council	Station Road	Cable works beneath the width of the street for the length shown in brown on sheets 7 and 8 of the streets, rights of way and access plans, reference SW-14.
Ashford Borough Council	Goldwell Lane	Cable works beneath the width of the street for the length shown in brown on sheets 7, 8 and 9 of the streets, rights of way and access plans, reference SW-20.
Ashford Borough Council	Church Lane	Cable works beneath the width of the street for the length shown in brown on sheet 10 of the streets, rights of way and access plans, reference SW-27.

SCHEDULE 5

Article 11

ALTERATION OF STREETS

(1) Area	*(2) Streets subject to alteration*	*(3) Description of alteration*
Ashford Borough Council	Bank Road	Works for the provision of a permanent means of access to the authorised development including vegetation clearance for the creation of visibility splays within the area shown in green on sheets 6 and 7 of the streets, rights of way and access plans, references A-1, A-5, A-6 and A-10.
Ashford Borough Council	Laws Lane	Works for the provision of a permanent means of access to the authorised development including vegetation clearance for the creation of visibility splays within the area shown in green on sheet 6 of the streets, rights of way and access plans, references A-2, A-3 and A-4.
Ashford Borough Council	Public right of way AE396	Works for the provision of a permanent means of access to the authorised development including vegetation clearance for the creation of visibility splays within the area shown in green on sheets 6 and 7 of the streets, rights of way and access plans, references A-7, A-8 and A-9.
Ashford Borough Council	Calleywell Lane	Works for the provision of a permanent means of access to the authorised development including vegetation clearance for the creation of visibility splays within the area shown in green on sheets 7 and 8 of the streets, rights of way and access plans, references A-11 and A-12.
Ashford Borough Council	Station Road	Works for the provision of a permanent means of access to the authorised development including vegetation clearance for the creation of visibility splays within the area shown in green on sheets 7 and 8 of the streets, rights of way and access plans, references A-13, A-14 and A-15.

Ashford Borough Council	Goldwell Lane	Works for the provision of a permanent means of access to the authorised development including vegetation clearance for the creation of visibility splays within the area shown in green on sheet 9 of the streets, rights of way and access plans, reference A-16.
Ashford Borough Council	Church Lane	Works for the provision of a permanent means of access to the authorised development including vegetation clearance for the creation of visibility splays within the area shown in green on sheet 10 of the streets, rights of way and access plans, reference A-17.

SCHEDULE 6

Article 14

ACCESS TO WORKS

(1) Area	*(2) Street*	*(3) Description of means of access*
Ashford Borough Council	Bank Road #1 southbound	The provision of a permanent means of access to the authorised development from the point marked A-1 on sheet 6 of the streets, rights of way and access plans.
Ashford Borough Council	Laws Lane #1 westbound and eastbound	The provision of a permanent means of access to the authorised development from the point marked A-2 on sheet 6 of the streets, rights of way and access plans.
Ashford Borough Council	Laws Lane #2 westbound	The provision of a permanent means of access to the authorised development from the point marked A-3 on sheet 6 of the streets, rights of way and access plans.
Ashford Borough Council	Laws Lane #3 eastbound	The provision of a permanent means of access to the authorised development from the point marked A-4 on sheet 6 of the streets, rights of way and access plans.
Ashford Borough Council	Bank Road #2 southbound	The provision of a permanent means of access to the authorised development from the point marked A-5 on sheet 6 of the streets, rights of way and access plans.
Ashford Borough Council	Bank Road #3 northbound	The provision of a permanent means of access to the authorised development from the point marked A-6 on sheets 6 and 7 of the streets, rights of way and access plans.
Ashford Borough Council	Public right of way AE396 #1 westbound and eastbound	The provision of a permanent means of access to the authorised development from the point marked A-7 on sheets 6 and 7 of the streets, rights of way and access plans.
Ashford Borough Council	Public right of way AE396 #2 westbound and eastbound	The provision of a permanent means of access to the authorised development from the point marked A-8 on sheets 6 and 7 of the streets, rights of way and access plans.
Ashford Borough Council	Public right of way AE396 #3	The provision of a permanent

	westbound and eastbound	means of access to the authorised development from the point marked A-9 on sheet 6 of the streets, rights of way and access plans.
Ashford Borough Council	Bank Road #4 northbound and southbound	The provision of a permanent means of access to the authorised development from the point marked A-10 on sheets 6 and 7 of the streets, rights of way and access plans.
Ashford Borough Council	Calleywell Lane #1 westbound	The provision of a permanent means of access to the authorised development from the point marked A-11 on sheet 7 of the streets, rights of way and access plans.
Ashford Borough Council	Calleywell Lane #2 westbound	The provision of a permanent means of access to the authorised development from the point marked A-12 on sheet 7 and 8 of the streets, rights of way and access plans.
Ashford Borough Council	Station Road #1 eastbound	The provision of a permanent means of access to the authorised development from the point marked A-13 on sheets 7 and 8 of the streets, rights of way and access plans.
Ashford Borough Council	Station Road #2 eastbound	The provision of a permanent means of access to the authorised development from the point marked A-14 on sheets 7 and 8 of the streets, rights of way and access plans.
Ashford Borough Council	Station Road #3 eastbound	The provision of a permanent means of access to the authorised development from the point marked A-15 on sheet 8 of the streets, rights of way and access plans.
Ashford Borough Council	Goldwell Lane eastbound	The provision of a permanent means of access to the authorised development from the point marked A-16 on sheet 9 of the streets, rights of way and access plans.
Ashford Borough Council	Church Lane westbound and eastbound	The provision of a permanent means of access to the authorised development from the point marked A-17 on sheet 10 of the streets, rights of way and access plans.

SCHEDULE 7

Article 16

TRAFFIC REGULATION MEASURES

(1) Area	*(2) Extent of temporary traffic signal and banksman control area*
Ashford Borough Council	Laws Lane approximately 140 meters southwest of Bank Road. An area of existing highway in a generally south-westerly direction on Laws Lane for a distance of 300 metres as shown with a green broken line on sheet 1 of the traffic regulations measures plans, reference TR-1.
Ashford Borough Council	Byway Open to All Traffic AE396 southwest of Roman Road. An area of existing Byway Open to All Traffic in a generally south-westerly direction on Byway Open to All Traffic AE396 for a distance of 370 metres as shown with a green broken line on sheets 2 and 3 of the traffic regulations measures plans, reference TR-2.
Ashford Borough Council	Roman Road at access to Bank Farm and Bank Farm access at Roman Road. An area of existing highway in a generally north westerly direction on Bank Road for a distance of 680m and a south-easterly direction on Roman Road for a distance of 100 metres with and an area of existing private road in a generally south-westerly direction on Bank Farm access for a distance of 265 metres as shown with a green broken line on sheets 2 and 3 of the traffic regulations measures plans, reference TR-3.
Ashford Borough Council	Station Road north of Calleywell Lane and Goldwell Lane. An area of existing highway in a generally southerly direction on Station Road for a distance of 190 metres as shown with a green broken line on sheets 4 and 6 of the traffic regulations measures plans, reference TR-4.
Ashford Borough Council	Main access on Station Road approximately 115 metres south of the centre of HS1 bridge. An area of existing highway in a generally south-westerly direction on Station Road for a distance of 100 metres as shown with a green broken line on sheet 5 of the traffic regulations measures plans, reference TR-5.
Ashford Borough Council	Goldwell Lane Site access approximately 190 metres north of Roman Road. An area of existing highway in a generally south-westerly direction on Goldwell Lane for a distance of 100 metres as shown with a green broken line on sheet 6 of the traffic regulations measures plans, reference TR-6.
Ashford Borough Council	Goldwell Lane east of Calleywell Lane and north of Roman Road. An area of existing highway in a generally southerly direction on Goldwell Lane for a distance of 1030m meters as shown with a green broken line on sheets 4 and 6 of the traffic regulations measures plans, reference TR-7.
Ashford Borough Council	Church Lane south of the centre of M20 bridge. An area of existing highway in a generally southerly direction on Church Lane for a distance of 690m meters from the M20 bridge to 230m south of the HS1 bridge as shown with a green broken line on sheet 7 of the traffic regulations measures plans, reference TR-8.

SCHEDULE 8

Article 17

PUBLIC RIGHTS OF WAY

PART 1

PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

(1) Area	*(2) Public rights of way to be stopped up*	*(3) Extent of stopping up*	*(4) New public right of way to be substituted*
Ashford Borough Council	AE385 (Section 1)	Part of footpath to be stopped up, shown as FTD-1 on sheet 1 of the streets, rights of way and access plans.	FNR-1, shown on sheet 1 of the streets, rights of way and access plans.
Ashford Borough Council	AE385 (Section 2)	Part of footpath to be stopped up, shown as FTD-2 on sheet 1 of the streets, rights of way and access plans.	FNR-2, shown on sheet 1 of the streets, rights of way and access plans.
Ashford Borough Council	AE370	Part of footpath to be stopped up, shown as FTD-3 on sheets 1 and 2 of the streets, rights of way and access plans.	FNR-3, shown on sheets 1 and 2 of the streets, rights of way and access plans.
Ashford Borough Council	AE377	Part of footpath to be stopped up, shown as FTD-4 on sheets 1 and 2 of the streets, rights of way and access plans.	FNR-4, shown on sheets 1 and 2 of the streets, rights of way and access plans.
Ashford Borough Council	AE657 and AE656	Part of AE657 and part of AE656 to be stopped up, shown as FTD-12 and FTD-13 on sheet 3 of the streets, rights of way and access plans.	FNR-12, shown on sheet 3 of the streets, rights of way and access plans.
Ashford Borough Council	AE475	Part of footpath to be stopped up, shown as FTD-11 on sheet 4 of the streets, rights of way and access plans.	FNR-11, shown on sheet 4 of the streets, rights of way and access plans.

PART 2

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

(1) Area	*(2) Public right of way to be closed*	*(3) Extent of closure*	*(4) New public right of way to be substituted*
Ashford Borough Council	AE378	Part of footpath to be closed, shown as FTD-5 on sheets 2 and 3 of the streets, rights of way and access plans.	FNR-5, shown on sheets 2 and 3 of the streets, rights of way and access plans.
Ashford Borough Council	AE428	Part of footpath to be closed, shown as FTD-6 on sheet 2 of the streets, rights of way and access plans.	FNR-6 shown on sheet 2 of the streets, rights of way and access plans.
Ashford Borough Council	AE448	Entire footpath to be closed, shown as FTD-7 on sheets 2 and 3 of the streets, rights of way and access plans.	FNR-7, shown on sheets 2 and 3 of the streets, rights of way and access plans.
Ashford Borough Council	AE431	Part of footpath to be closed, shown as FTD-8 on sheets 2 and 3 of the streets, rights of way and access plans.	FNR-8 shown on sheets 2 and 3 of the streets, rights of way and access plans.
Ashford Borough Council	AE436	Part of footpath to be closed, shown as FTD-9 on sheets 2 and 3 of the streets, rights of way and access plans.	FNR-9, shown on sheets 2 and 3 of the streets, rights of way and access plans.
Ashford Borough Council	AE454	Entire footpath to be closed, shown as FTD-10 on sheet 4 of the streets, rights of way and access plans.	FNR-10, shown on sheet 4 of the streets, rights of way and access plans.

PART 3

PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) Area	*(2) Public right of way to be stopped up*	*(3) Extent of stopping up*
Ashford Borough Council	AE447, shown as FC-1 on sheet 2 of the streets, rights of way and access plans.	Entire footpath.
Ashford Borough Council	AE455, shown as FC-2 on sheet 4 of the streets, rights of way and access plans.	Part of footpath.

SCHEDULE 9

Article 18

STATUS OF PUBLIC RIGHTS OF WAY CREATED OR IMPROVED

(1) Existing or new highway (footpath)	*(2) New status*	*(3) Reference*
Extension of footpath AE380 across Bank Road to connect to FNR-1 (AE385 diversion), shown on sheet 1 of the streets, rights of way and access plans.	Footpath	FN-AE380, shown on sheet 1 of the streets, rights of way and access plans.
New footpath, running parallel to AE377 on Handen Farm driveway shown on sheet 2 of the streets, rights of way and access plans.	Footpath	FN-6, shown on sheet 2 of the streets, rights of way and access plans.
New footpath from FNR-9 (AE436 diversion) to AE657, shown on sheets 2 and 3 of the streets, rights of way and access plans.	Footpath	FN-1, shown on sheets 2 and 3 of the streets, rights of way and access plans.
Extension of footpath AE657 to connect to FNR-8 (AE431 diversion), shown on sheets 2 and 3 of the streets, rights of way and access plans.	Footpath	FN-AE657, shown on sheets 2 and 3 of the streets, rights of way and access plans.
New footpath from FNR-7 (AE448 diversion) to FNR-5 (AE378 diversion), shown on sheets 2 and 3 of the streets, rights of way and access plans.	Footpath	FN-7 shown on sheets 2 and 3 of the streets, rights of way and access plans.
New footpath from FN-3 to AE657, shown on sheet 3 of the streets, rights of way and access plans.	Footpath	FN-2, shown on sheet 3 of the streets, rights of way and access plans.
New footpath from AE431 to AE657, shown on sheet 3 of the streets, rights of way and access plans.	Footpath	FN-3, shown on sheet 3 of the streets, rights of way and access plans.
New footpath from AE657 to AE457, shown on sheet 3 of the streets, rights of way and access plans.	Footpath	FN-8, shown on sheet 3 of the streets, rights of way and access plans.

SCHEDULE 10

Article 25

LAND IN RESPECT OF WHICH ONLY RIGHTS ETC MAY BE ACQUIRED

(1) Plot reference (as shown on the land plans)	*(2) Work No.*	*(3) Purposes for which rights over land may be acquired and restrictive covenants imposed*
3/13, 3/18, 3/21, 3/24, 4/11	No Work No. Site Wide Works	(a) site preparation works and site clearance, including vegetation removal; (b) remediation of contamination; (c) alteration to locations of services and utilities infrastructure; (d) works for the benefit or protection of land affected by the authorised development; (e) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8; (f) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems; (g) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way; (h) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management; (i) 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; (j) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures; (k) 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 (l) 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.
3/50, 3/51, 5/5, 5/6, 5/7, 5/10, 5/11, 5/12, 5/14, 5/16, 5/17, 5/18, 5/19	Work No. 4 and Site Wide Works	(a) laying of electrical cables to connect Work No. 3 to Sellindge Substation, including tunnelling, boring, open cut trenching and horizontal directional drilling works for trenchless crossings; (b) works to allow electrical cable crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways; (c) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;

(d) crossing of Network Rail infrastructure either—

(i) using existing electrical ducts; or

(ii) through the installation of new cable ducts;

(e) laying down of internal access tracks, ramps, means of access, footpaths, roads, landscaping and vegetation management, signage, information boards and temporary secured construction laydown areas;

(f) extension of the Sellindge Substation including—

(i) installation of new or amended structures, including outdoor air insulated switchgear or indoor gas insulated switchgear, circuit breakers, disconnectors, earth switches, bus-bars, steel supports and ancillary electrical infrastructure;

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

(iii) construction of a retaining wall, landscaping and vegetation management, signage, information boards and temporary construction laydown areas;

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

(v) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, and communication infrastructure; and

(vi) drainage works;

(g) site preparation works and site clearance, including vegetation removal;

(h) earthworks;

(i) remediation of contamination;

(j) alteration to locations of services and utilities infrastructure;

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

(l) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;

(m) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;

(n) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way;

(o) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management;

(p) 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;

(q) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures;

(r) 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 (s) 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.
5/8, 5/9, 5/13, 5/15	Work No. 4 and Site Wide Works	(a) laying of electrical cables to connect Work No. 3 to Sellindge Substation, including tunnelling, boring, open cut trenching and horizontal directional drilling works for trenchless crossings; (b) works to allow electrical cable crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways; (c) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains; (d) crossing of Network Rail infrastructure either— (i) using existing electrical ducts; or (ii) through the installation of new cable ducts; (e) laying down of internal access tracks, ramps, means of access, footpaths, roads, landscaping and vegetation management, signage, information boards and temporary secured construction laydown areas; (f) extension of the Sellindge Substation including— (i) installation of new or amended structures, including outdoor air insulated switchgear or indoor gas insulated switchgear, circuit

breakers, disconnectors, earth switches, bus-bars, steel supports and ancillary electrical infrastructure;
(ii) laying down of access tracks, ramps, means of access, footpaths and roads;
(iii) construction of a retaining wall, landscaping and vegetation management, signage, information boards and temporary construction laydown areas;
(iv) fencing, gates, boundary treatment and other means of enclosure;
(v) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, and communication infrastructure; and
(vi) drainage works;
(g) site preparation works and site clearance, including vegetation removal;
(h) earthworks;
(i) remediation of contamination;
(j) alteration to locations of services and utilities infrastructure;
(k) works for the benefit or protection of land affected by the authorised development;
(l) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;
(m) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;
(n) laying down of public rights of way diversions, signage and information boards and extinguishment of

existing public rights of way;
(o) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management;
(p) 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;
(q) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures;
(r) 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;
(s) 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;
(t) 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 Sellindge Substation; (u) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain watercourses, public sewers and drains and drainage apparatus and equipment; (v) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development; and (w) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain soft landscaping and biodiversity measures.
3/8, 3/23, 4/5, 4/6, 4/7, 4/8	Work No. 5 and Site Wide Works	(a) fencing, gates, boundary treatment and other means of enclosure; (b) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, a fence detection system, cameras, weather stations, and communication infrastructure; (c) laying of electrical cables, including but not limited to electrical cables connecting Work No. 1, Work No. 2 and Work No. 3, including works to allow electrical cables crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways;

(d) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;
(e) laying down of internal access tracks (including fire access tracks), improvement of existing tracks, ramps, means of access, and roads, including construction signage and information boards;
(f) provision of water tanks and pipework connection to hydrants located at inverter stations where BESS installed;
(g) equipment and materials storage during construction and decommissioning phases;
(h) site preparation works and site clearance, including vegetation removal;
(i) earthworks;
(j) remediation of contamination;
(k) alteration to locations of services and utilities infrastructure;
(l) works for the benefit or protection of land affected by the authorised development;
(m) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;
(n) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;
(o) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way;
(p) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street

		signage and furniture in, under or above a street and works to facilitate traffic management; (q) 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; (r) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures; (s) 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 (t) 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.
3/2, 3/4	Work No. 8 and Site Wide Works	(a) landscape and biodiversity enhancement measures, including habitat creation and management and seating; (b) mitigation and biodiversity enhancement planting; (c) landscape reinforcement works;

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

(e) works to alter, maintain, repair or replace existing crossing structures over non-navigable rivers and other watercourses and drains;

(f) site preparation works and site clearance, including vegetation removal;

(g) remediation of contamination;

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

(i) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;

(j) 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;

(k) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures;

(l) 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

		(m) 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.
5/1, 5/2, 5/3, 5/4	Work No. 4, Work No. 6 and Site Wide Works	(a) laying of electrical cables to connect Work No. 3 to Sellindge Substation, including tunnelling, boring, open cut trenching and horizontal directional drilling works for trenchless crossings; (b) works to allow electrical cable crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways; (c) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains; (d) crossing of Network Rail infrastructure either— (i) using existing electrical ducts; or (ii) through the installation of new cable ducts; (e) laying down of internal access tracks, ramps, means of access, footpaths, roads, landscaping and vegetation management, signage, information boards and temporary secured construction laydown areas; (f) extension of the Sellindge Substation including— (i) installation of new or amended structures, including outdoor air insulated switchgear or indoor gas insulated switchgear, circuit breakers, disconnectors, earth switches, bus-bars, steel supports and ancillary electrical infrastructure; (ii) laying down of access

tracks, ramps, means of access, footpaths and roads;
(iii) construction of a retaining wall, landscaping and vegetation management, signage, information boards and temporary construction laydown areas;
(iv) fencing, gates, boundary treatment and other means of enclosure;
(v) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, and communication infrastructure; and
(vi) drainage works;
(g) creation of accesses from the highway;
(h) creation of visibility splays;
(i) upgrading and repairing of existing accesses;
(j) highways improvements;
(k) site preparation works and site clearance, including vegetation removal;
(l) earthworks;
(m) remediation of contamination;
(n) alteration to locations of services and utilities infrastructure;
(o) works for the benefit or protection of land affected by the authorised development;
(p) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;
(q) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;
(r) laying down of public rights of way diversions,

		signage and information boards and extinguishment of existing public rights of way; (s) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management; (t) 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; (u) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures; (v) 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 (w) 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.
3/35, 3/40, 3/46	Work No. 8 and Site Wide	(a) landscape and biodiversity

	Works	enhancement measures, including habitat creation and management and seating; (b) mitigation and biodiversity enhancement planting; (c) landscape reinforcement works; (d) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains; (e) works to alter, maintain, repair or replace existing crossing structures over non-navigable rivers and other watercourses and drains; (f) site preparation works and site clearance, including vegetation removal; (g) remediation of contamination; (h) works for the benefit or protection of land affected by the authorised development; (i) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8; (j) earthworks; (k) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems; (l) 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; (m) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical

		underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures; (n) 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 (o) 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.
3/45	Work No. 4, Work No. 8 and Site Wide Works	(a) laying of electrical cables to connect Work No. 3 to Sellindge Substation, including tunnelling, boring, open cut trenching and horizontal directional drilling works for trenchless crossings; (b) works to allow electrical cable crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways; (c) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains; (d) crossing of Network Rail infrastructure either— (i) using existing electrical ducts; or (ii) through the installation of new cable ducts; (e) laying down of internal access tracks, ramps, means of

access, footpaths, roads, landscaping and vegetation management, signage, information boards and temporary secured construction laydown areas;

(f) extension of the Sellindge Substation including—

(i) installation of new or amended structures, including outdoor air insulated switchgear or indoor gas insulated switchgear, circuit breakers, disconnectors, earth switches, bus-bars, steel supports and ancillary electrical infrastructure;

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

(iii) construction of a retaining wall, landscaping and vegetation management, signage, information boards and temporary construction laydown areas;

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

(v) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, and communication infrastructure; and

(vi) drainage works;

(g) landscape and biodiversity enhancement measures, including habitat creation and management and seating;

(h) mitigation and biodiversity enhancement planting;

(i) landscape reinforcement works;

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

(k) works to alter, maintain, repair or replace existing crossing structures over non-navigable rivers and other watercourses and drains;

(l) site preparation works and site clearance, including vegetation removal;

(m) remediation of contamination;
(n) works for the benefit or protection of land affected by the authorised development;
(o) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;
(p) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;
(q) 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;
(r) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures;
(s) 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
(t) 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.
3/49	Work No. 4, Work No. 8 and Site Wide Works	(a) laying of electrical cables to connect Work No. 3 to Sellindge Substation, including tunnelling, boring, open cut trenching and horizontal directional drilling works for trenchless crossings; (b) works to allow electrical cable crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways; (c) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains; (d) crossing of Network Rail infrastructure either— (i) using existing electrical ducts; or (ii) through the installation of new cable ducts; (e) laying down of internal access tracks, ramps, means of access, footpaths, roads, landscaping and vegetation management, signage, information boards and temporary secured construction laydown areas; (f) extension of the Sellindge Substation including— (i) installation of new or amended structures, including outdoor air insulated switchgear or indoor gas insulated switchgear, circuit breakers, disconnectors, earth switches, bus-bars, steel supports and ancillary electrical infrastructure; (ii) laying down of access tracks, ramps, means of access, footpaths and roads;

(iii) construction of a retaining wall, landscaping and vegetation management, signage, information boards and temporary construction laydown areas;
(iv) fencing, gates, boundary treatment and other means of enclosure;
(v) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, and communication infrastructure; and
(vi) drainage works;
(g) landscape and biodiversity enhancement measures, including habitat creation and management and seating;
(h) mitigation and biodiversity enhancement planting;
(i) landscape reinforcement works;
(j) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;
(k) works to alter, maintain, repair or replace existing crossing structures over non-navigable rivers and other watercourses and drains;
(l) site preparation works and site clearance, including vegetation removal;
(m) earthworks;
(n) remediation of contamination;
(o) alteration to locations of services and utilities infrastructure;
(p) works for the benefit or protection of land affected by the authorised development;
(q) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;
(r) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including

		bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems; (s) 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; (t) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures; (u) 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 (v) 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.
1/5, 4/1, 4/2, 4/3	Work No. 5, Work No. 6 and Site Wide Works	(a) fencing, gates, boundary treatment and other means of enclosure; (b) provision of security and monitoring measures such as

CCTV columns, lighting columns and lighting, a fence detection system, cameras, weather stations, and communication infrastructure;
(c) laying of electrical cables, including but not limited to electrical cables connecting Work No. 1, Work No. 2 and Work No. 3, including works to allow electrical cables crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways;
(d) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;
(e) laying down of internal access tracks (including fire access tracks), improvement of existing tracks, ramps, means of access, and roads, including construction signage and information boards;
(f) provision of water tanks and pipework connection to hydrants located at inverter stations where BESS installed;
(g) equipment and materials storage during construction and decommissioning phases;
(h) creation of accesses from the highway;
(i) creation of visibility splays;
(j) upgrading and repairing of existing accesses;
(k) highways improvements;
(l) site preparation works and site clearance, including vegetation removal;
(m) earthworks;
(n) remediation of contamination;
(o) alteration to locations of services and utilities infrastructure;
(p) works for the benefit or protection of land affected by the authorised development;
(q) landscaping and biodiversity mitigation and enhancement measures including planting to the extent

not undertaken under Work No. 8;

(r) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;

(s) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way;

(t) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management;

(u) 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;

(v) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures;

(w) 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 (x) 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.
3/20, 3/22	Work No. 5, Work No. 7 and Site Wide Works	(a) fencing, gates, boundary treatment and other means of enclosure; (b) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, a fence detection system, cameras, weather stations, and communication infrastructure; (c) laying of electrical cables, including but not limited to electrical cables connecting Work No. 1, Work No. 2 and Work No. 3, including works to allow electrical cables crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways; (d) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains; (e) laying down of internal access tracks (including fire access tracks), improvement of existing tracks, ramps, means of access, and roads, including construction signage and information boards; (f) provision of water tanks and pipework connection to hydrants located at inverter stations where BESS installed; (g) equipment and materials storage during construction and decommissioning phases; (h) compound areas including hardstanding, turning and loading areas, car parking, offices/welfare facilities,

storage areas, waste skip areas, solar PV panel testing area, bunded area for storage of fuels and hydrocarbons, security fencing and hoarding;

(i) an internal haulage road comprising temporary permeable ground protection mats including passing bays, means of access, and signage;

(j) site preparation works and site clearance, including vegetation removal;

(k) earthworks;

(l) remediation of contamination;

(m) alteration to locations of services and utilities infrastructure;

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

(o) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;

(p) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;

(q) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way;

(r) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management;

(s) 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; (t) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures; (u) 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 (v) 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.
3/1, 3/6	Work No. 5, Work No. 8 and Site Wide Works	(a) fencing, gates, boundary treatment and other means of enclosure; (b) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, a fence detection system, cameras, weather stations, and communication infrastructure; (c) laying of electrical cables, including but not limited to electrical cables connecting Work No. 1, Work No. 2 and Work No. 3, including works to allow electrical cables

crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways;
(d) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;
(e) laying down of internal access tracks (including fire access tracks), improvement of existing tracks, ramps, means of access, and roads, including construction signage and information boards;
(f) provision of water tanks and pipework connection to hydrants located at inverter stations where BESS installed;
(g) equipment and materials storage during construction and decommissioning phases;
(h) landscape and biodiversity enhancement measures, including habitat creation and management and seating;
(i) mitigation and biodiversity enhancement planting;
(j) landscape reinforcement works;
(k) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;
(l) works to alter, maintain, repair or replace existing crossing structures over non-navigable rivers and other watercourses and drains;
(m) site preparation works and site clearance, including vegetation removal;
(n) earthworks;
(o) remediation of contamination;
(p) alteration to locations of services and utilities infrastructure;
(q) works for the benefit or protection of land affected by the authorised development;
(r) landscaping and biodiversity mitigation and enhancement measures including planting to the extent

not undertaken under Work No. 8;

(s) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;

(t) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way;

(u) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management;

(v) 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;

(w) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures;

(x) 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 (y) 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.
1/18, 3/14, 3/15, 3/16, 3/17	Work No. 5, Work No. 6, Work No. 7 and Site Wide Works	(a) fencing, gates, boundary treatment and other means of enclosure; (b) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, a fence detection system, cameras, weather stations, and communication infrastructure; (c) laying of electrical cables, including but not limited to electrical cables connecting Work No. 1, Work No. 2 and Work No. 3, including works to allow electrical cables crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways; (d) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains; (e) laying down of internal access tracks (including fire access tracks), improvement of existing tracks, ramps, means of access, and roads, including construction signage and information boards; (f) provision of water tanks and pipework connection to hydrants located at inverter stations where BESS installed; (g) equipment and materials storage during construction and decommissioning phases; (h) creation of accesses from the highway; (i) creation of visibility splays;

(j) upgrading and repairing of existing accesses;
(k) highways improvements;
(l) compound areas including hardstanding, turning and loading areas, car parking, offices/welfare facilities, storage areas, waste skip areas, solar PV panel testing area, bunded area for storage of fuels and hydrocarbons, security fencing and hoarding;
(m) an internal haulage road comprising temporary permeable ground protection mats including passing bays, means of access, and signage;
(n) site preparation works and site clearance, including vegetation removal;
(o) earthworks;
(p) remediation of contamination;
(q) alteration to locations of services and utilities infrastructure;
(r) works for the benefit or protection of land affected by the authorised development;
(s) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;
(t) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;
(u) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way;
(v) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under

		or above a street and works to facilitate traffic management; (w) 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; (x) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures; (y) 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 (z) 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.
1/6, 1/13, 1/15	Work No. 5, Work No. 6, Work No. 8 and Site Wide Works	(a) fencing, gates, boundary treatment and other means of enclosure; (b) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, a fence detection system, cameras, weather stations, and

communication infrastructure;
(c) laying of electrical cables, including but not limited to electrical cables connecting Work No. 1, Work No. 2 and Work No. 3, including works to allow electrical cables crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways;
(d) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;
(e) laying down of internal access tracks (including fire access tracks), improvement of existing tracks, ramps, means of access, and roads, including construction signage and information boards;
(f) provision of water tanks and pipework connection to hydrants located at inverter stations where BESS installed;
(g) equipment and materials storage during construction and decommissioning phases;
(h) creation of accesses from the highway;
(i) creation of visibility splays;
(j) upgrading and repairing of existing accesses;
(k) highways improvements;
(l) landscape and biodiversity enhancement measures, including habitat creation and management and seating;
(m) mitigation and biodiversity enhancement planting;
(n) landscape reinforcement works;
(o) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;
(p) works to alter, maintain, repair or replace existing crossing structures over non-navigable rivers and other watercourses and drains;
(q) site preparation works and site clearance, including

vegetation removal;
(r) earthworks;
(s) remediation of contamination;
(t) alteration to locations of services and utilities infrastructure;
(u) works for the benefit or protection of land affected by the authorised development;
(v) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;
(w) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;
(x) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way;
(y) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management;
(z) 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;
(aa) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables,

		telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures; (bb) 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 (cc) 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.
2/13, 3/7, 3/9, 3/11, 4/9	Work No. 5, Work No. 7, Work No. 8 and Site Wide Works	(a) fencing, gates, boundary treatment and other means of enclosure; (b) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, a fence detection system, cameras, weather stations, and communication infrastructure; (c) laying of electrical cables, including but not limited to electrical cables connecting Work No. 1, Work No. 2 and Work No. 3, including works to allow electrical cables crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways; (d) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains; (e) laying down of internal access tracks (including fire access tracks), improvement of

existing tracks, ramps, means of access, and roads, including construction signage and information boards;
(f) provision of water tanks and pipework connection to hydrants located at inverter stations where BESS installed;
(g) equipment and materials storage during construction and decommissioning phases;
(h) compound areas including hardstanding, turning and loading areas, car parking, offices/welfare facilities, storage areas, waste skip areas, solar PV panel testing area, bunded area for storage of fuels and hydrocarbons, security fencing and hoarding;
(i) an internal haulage road comprising temporary permeable ground protection mats including passing bays, means of access, and signage;
(j) landscape and biodiversity enhancement measures, including habitat creation and management and seating;
(k) mitigation and biodiversity enhancement planting;
(l) landscape reinforcement works;
(m) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;
(n) works to alter, maintain, repair or replace existing crossing structures over non-navigable rivers and other watercourses and drains;
(o) site preparation works and site clearance, including vegetation removal;
(p) earthworks;
(q) remediation of contamination;
(r) alteration to locations of services and utilities infrastructure;
(s) works for the benefit or protection of land affected by the authorised development;
(t) landscaping and biodiversity mitigation and

enhancement measures including planting to the extent not undertaken under Work No. 8;

(u) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;

(v) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way;

(w) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management;

(x) 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;

(y) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures;

(z) 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 (aa) 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.
2/11, 4/4	Work No. 5, Work No. 6, Work No. 7, Work No. 8 and Site Wide Works	(a) fencing, gates, boundary treatment and other means of enclosure; (b) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, a fence detection system, cameras, weather stations, and communication infrastructure; (c) laying of electrical cables, including but not limited to electrical cables connecting Work No. 1, Work No. 2 and Work No. 3, including works to allow electrical cables crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways; (d) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains; (e) laying down of internal access tracks (including fire access tracks), improvement of existing tracks, ramps, means of access, and roads, including construction signage and information boards; (f) provision of water tanks and pipework connection to hydrants located at inverter stations where BESS installed; (g) equipment and materials storage during construction and decommissioning phases; (h) creation of accesses from the highway;

(i) creation of visibility splays;
(j) upgrading and repairing of existing accesses;
(k) highways improvements;
(l) compound areas including hardstanding, turning and loading areas, car parking, offices/welfare facilities, storage areas, waste skip areas, solar PV panel testing area, bunded area for storage of fuels and hydrocarbons, security fencing and hoarding;
(m) an internal haulage road comprising temporary permeable ground protection mats including passing bays, means of access, and signage;
(n) landscape and biodiversity enhancement measures, including habitat creation and management and seating;
(o) mitigation and biodiversity enhancement planting;
(p) landscape reinforcement works;
(q) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;
(r) works to alter, maintain, repair or replace existing crossing structures over non-navigable rivers and other watercourses and drains;
(s) site preparation works and site clearance, including vegetation removal;
(t) earthworks;
(u) remediation of contamination;
(v) alteration to locations of services and utilities infrastructure;
(w) works for the benefit or protection of land affected by the authorised development;
(x) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;
(y) sustainable drainage system ponds, depression storage, runoff outfalls,

general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;

(z) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way;

(aa) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management;

(bb) 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;

(cc) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures;

(dd) 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

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

remove vegetation and restrict the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development.

SCHEDULE 11

Article 25

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

Compensation enactments

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

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

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

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

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

3.—(1) Without limiting 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) of the 1961 Act (relevant valuation date), after "If" substitute—

"(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 7 of Schedule 11 to the Stonestreet Green Solar Order 2025);

(b) the acquiring authority is subsequently required by a determination under paragraph 3 of Schedule 2A to the 1965 Act (as modified by paragraph 10 of Schedule 11 to the Stonestreet Green Solar Order 2025) to take the additional land; and

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

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right."

Application of the 1965 Act

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

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

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

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

(2) Without limiting the scope of sub-paragraph (1), Part 1 of the 1965 Act 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 of the 1965 Act (measure of compensation in case of severance) substitute—

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

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

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

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

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

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

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

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

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

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

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

10. For Schedule 2A of the 1965 Act substitute—

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 27 (application of the 1981 Act) of the Stonestreet Green Solar Order 2025 in respect of the land to which the notice to treat relates.

(2) But see article 28 (acquisition of subsoil and airspace only) of the Stonestreet Green Solar Order 2025 which excludes acquisition of subsoil or airspace only from this Schedule.

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

Counter-notice requiring purchase of land

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

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

Response to counter-notice

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

(a) withdraw the notice to treat;

(b) accept the counter-notice; or

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

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

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

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

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

Determination by Upper Tribunal

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

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

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

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

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

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

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

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

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

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

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

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

SCHEDULE 12

Article 34

ACQUISITION OF WAYLEAVES, EASEMENTS AND OTHER RIGHTS

PART 1

ON BEHALF OF LICENCE HOLDERS

Acquisition of necessary wayleaves

1.—(1) This paragraph applies where—

(a) a licence holder has agreed in writing with the undertaker that it is necessary or expedient to remove an electric line within the Order limits and to install and keep installed an electric line in substitution for it on, under or over specified land;

(b) the licence holder has agreed in writing that the undertaker may seek a necessary wayleave on behalf of the licence holder in respect of the specified land; and

(c) the owner or occupier of the specified land, having been given a notice by the undertaker or the licence holder requiring him to give the necessary wayleave to the licence holder within a period (not being less than 21 days) specified in the notice—

(i) has failed to give the wayleave before the end of that period; or

(ii) has given the wayleave subject to terms and conditions to which the undertaker,

following consultation with the licence holder, objects.

(2) Subject to sub-paragraphs (3) and (4) below, the Secretary of State may, on the application of the undertaker, himself grant the necessary wayleave to the licence holder subject to such terms and conditions as he thinks fit; and a necessary wayleave so granted shall, unless previously terminated in accordance with a term contained in the wayleave, continue in force for such period as may be specified in the wayleave.

(3) The Secretary of State shall not entertain an application under sub-paragraph (2) above in any case where—

(a) the specified land is covered by a dwelling, or will be so covered on the assumption that any planning permission which is in force is acted on; and

(b) the line is to be installed on or over the specified land.

(4) Before granting the necessary wayleave to the licence holder, the Secretary of State shall afford—

(a) the occupier of the specified land; and

(b) where the occupier is not also the owner of the specified land, the owner, an opportunity of being heard by a person appointed by the Secretary of State.

(5) A necessary wayleave granted to the licence holder under this paragraph—

(a) shall not be subject to the provisions of any enactment requiring the registration of interests in, charges over or other obligations affecting land; but

(b) shall bind any person who is at any time the owner or occupier of the specified land.

(6) Where in pursuance of a necessary wayleave granted under this paragraph a licence holder has erected on any land supports for an electric line, he shall be deemed to have an interest in that land for the purposes of section 7 of the Mines (Working Facilities and Support) Act 1966.

(7) Where a wayleave is granted to a licence holder under this paragraph—

(a) the occupier of the specified land; and

(b) where the occupier is not also the owner of the specified land, the owner, may recover from the undertaker compensation in respect of the grant.

(8) Where in the exercise of any right conferred by such a wayleave any damage is caused to the specified land or to movables, any person interested in the specified land or movables may recover from the undertaker compensation in respect of that damage; and where in consequence of the exercise of such a right a person is disturbed in his enjoyment of any land or movables he may recover from the undertaker compensation in respect of that disturbance.

(9) Compensation under this paragraph may be recovered as a lump sum or by periodical payments or partly in one way and partly in the other.

(10) Any question of disputed compensation under this paragraph shall be determined by the Tribunal; and section 4 of the Land Compensation Act 1961 shall apply to any such determination.

Compulsory acquisition of easements or other rights

2.—(1) This paragraph applies where—

(a) a licence holder has agreed in writing with the undertaker that it is necessary or expedient to remove an electric line within the Order limits and to install and keep installed an electric line in substitution for it on, under or over specified land; and

(b) the licence holder has agreed in writing that the undertaker may seek an easement or other right in land on behalf of the licence holder in respect of the specified land.

(2) Subject to sub-paragraph (3) and (4), where a compulsory purchase order is sought by the undertaker pursuant to sub-paragraph (1), the Secretary of State may authorise the relevant licence holder to purchase compulsorily an easement or right over the specified land where the Secretary of State is satisfied that it is required for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on.

(3) Part I (paragraphs 2 onwards) and Part II of Schedule 3 of the Electricity Act 1989 shall apply in respect of powers of compulsory purchase sought pursuant to this paragraph.

(4) Unless otherwise agreed between the undertaker and the licence holder in writing, where the undertaker seeks a compulsory purchase order on behalf of a licence holder pursuant to this paragraph, the negotiation of consideration and compensation shall be undertaken by the undertaker and any consideration or compensation agreed or determined shall be payable by the undertaker and Schedule 3 of the Electricity Act 1989 as applied by this paragraph shall be interpreted accordingly.

Interpretation

3. In this Part of this Schedule—

"dwelling" means a building or part of a building occupied, or (if not occupied) last occupied or intended to be occupied, as a private dwelling and includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with that building or part;

"licence holder" means a person holding a licence under section 6 of the Electricity Act 1989;

"necessary wayleave" means consent for the licence holder to install and keep installed the electric line on, under or over the specified land and to have access to the specified land for the purpose of inspecting, maintaining, adjusting, repairing, altering, replacing or removing the electric line;

"specified land" means the land within or outside the Order limits on, under or over which a licence holder agrees, pursuant to paragraph 1 or 2, that an electric line should be relocated in substitution for an existing electric line; and

"Tribunal" means the Upper Tribunal in relation to England and Wales.

PART 2

ON BEHALF OF CODE OPERATORS

Court imposition of code rights

4.—(1) This paragraph applies where—

(a) a code operator has agreed in writing with the undertaker that for the purpose of the authorised development it is necessary or expedient to remove electronic communications apparatus owned by the code operator within the Order limits and to install and keep installed electronic communications apparatus in substitution for it on, under or over specified land;

(b) the code operator has agreed in writing that the undertaker may seek code rights on behalf of the code operator in respect of the specified land, including all of the other terms of the agreement sought; and

(c) the code operator or the undertaker has given the relevant person a notice in writing—

(i) setting out the code rights, and all of the other terms of the agreement sought, and

(ii) stating that the person's agreement to those terms is sought.

(2) The undertaker may apply to the court for an order under this paragraph if the relevant person does not, before the end of 28 days beginning with the day on which the notice in sub-paragraph (1)(c) is given, agree to confer or be otherwise bound by the code rights.

(3) An order under this paragraph is one which imposes on the code operator and the relevant person an agreement between them which—

(a) confers the code rights on the operator, or

(b) provides for the code rights to bind the relevant person.

(4) Where the undertaker makes an application to the court under sub-paragraph (2), paragraphs 21, 22, 23, 24 and 26 of Part 4 of Schedule 3A (The Electronic Communications Code) and Part 14 (Compensation under The Code) of the Communications Act 2003 shall apply as if—

(a) (reference to the making of an 'order under paragraph 20' were substituted for the making of an order under Schedule 12 (acquisition of wayleaves, easements and other rights) of the Stonestreet Green Solar Order 2025; and

(b) unless otherwise agreed on a case-by-case basis in writing between the undertaker and the code operator, all references to 'consideration' or 'compensation' provided for in any agreement or order or otherwise to be determined shall be read as being payable by the undertaker.

Compulsory acquisition of easements or other rights

5.—(1) The undertaker may seek a compulsory purchase order on behalf of a code operator where—

(a) the code operator has agreed in writing with the undertaker that for the purpose of the authorised development it is necessary or expedient to remove electronic communications apparatus owned by the operator within the Order limits and to install and keep installed electronic communications apparatus in substitution for it on, under or over specified land;

(b) the code operator has agreed in writing that the undertaker may seek an easement or other rights over land on behalf of the code operator in respect of the specified land.

(2) Subject to sub-paragraph (3) and (4), where a compulsory purchase order is sought by the undertaker pursuant to sub-paragraph (1), the Secretary of State may authorise the relevant code operator to purchase compulsorily the specified land or an easement or right over the specified land if the Secretary of State is satisfied that it is required by the code operator—

(a) for, or in connection with, the establishment or running of the code operator's network; or

(b) as to which it can reasonably be foreseen that it will be so required.

(3) Subject to sub-paragraph (4), paragraphs 3(2) to 3(7) of Schedule 4 of the Communications Act 2003 shall apply in respect of powers of compulsory purchase sought pursuant to this paragraph.

(4) Unless otherwise agreed between the undertaker and the licence holder in writing, where the undertaker seeks a compulsory purchase order on behalf of a code operator pursuant to this paragraph, all negotiations of compensation shall be undertaken by the undertaker and any consideration or compensation agreed or determined in respect of any easements or rights acquired shall be payable by the undertaker and Schedule 4 of the Communications Act 2003 shall be interpreted accordingly as it applies to this paragraph.

Interpretation

6. In this Part of this Schedule, the following terms have the following meanings—

"code operator's network" has the meaning given for 'operator's network' in paragraph 6 of Schedule 3A of the Communications Act 2003;

"code rights" has the meaning given in paragraph 3 of Schedule 3A of the Communications Act 2003;

"court" has the meaning given in paragraph 94 of Schedule 3A of the Communications Act 2003;

"electronic communications apparatus" has the meaning given in paragraph 5 of Schedule 3A of the Communications Act 2003;

"code operator" has the meaning given for an 'operator' in paragraph 2 of Schedule 3A of the Communications Act 2003;

"relevant person" means the person in respect of whose interest in land a code right is required;

"specified land" means the land within or outside the Order limits on, under or over which an operator agrees, pursuant to paragraph 4(1), that electronic communications apparatus should be relocated in substitution for existing electronic communications apparatus.

PART 3

ON BEHALF OF WATER AND SEWERAGE UNDERTAKERS

Compulsory acquisition of easements or other rights

7.—(1) The undertaker may seek a compulsory purchase order on behalf of a water or sewerage undertaker where—

(a) the water or sewerage undertaker has agreed in writing with the undertaker that for the purpose of the authorised development it is necessary or expedient to remove water or sewerage apparatus owned by the water or sewerage undertaker within the Order limits and to install and keep installed alternative apparatus in substitution for it on, under or over specified land;

(b) the water or sewerage undertaker has agreed in writing that the undertaker may seek an easement or other rights over land on behalf of the water or sewerage undertaker in respect of the specified land.

(2) Subject to sub-paragraph (3), where a compulsory purchase order is sought by the undertaker pursuant to sub-paragraph (1), the Secretary of State may authorise the relevant water or sewerage undertaker to purchase compulsorily the specified land or an easement or right over the specified land where the Secretary of State is satisfied that it is required by the water or sewerage undertaker for the purposes of, or in connection with, the carrying out of its functions.

(3) Section 155(3) to (6) of the Water Industry Act 1991 shall apply in respect of powers of compulsory purchase sought pursuant to this paragraph.

(4) Unless otherwise agreed between the undertaker and the water or sewerage undertaker in writing, where the undertaker seeks a compulsory purchase order on behalf of a water or sewerage undertaker pursuant to this paragraph, all negotiations of compensation shall be undertaken by the undertaker and any consideration or compensation agreed or determined in respect of any easements or rights acquired shall be payable by the undertaker.

(5) In this paragraph—

"alternative apparatus" means alternative water or sewerage apparatus adequate to enable the water or sewerage undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"specified land" means the land within or outside the Order limits on, under or over which a water or sewerage undertaker agrees, pursuant to sub-paragraph (1), that alternative apparatus should be relocated in substitution for existing relevant water or sewerage apparatus.

"water or sewerage undertaker" means 'water undertaker' or 'sewerage undertaker' as defined in the Water Industry Act 1991; and

"water or sewerage apparatus" means (i) mains, pipes or other water apparatus belonging to or maintained by a water undertaker for the purposes of water supply; and (ii) any drain or works vested in a sewerage undertaker, and any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of the Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act, and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pimps, or other accessories forming part of any such sewer, drain or works, and in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus.

PART 4

ON BEHALF OF GAS TRANSPORTERS

Compulsory acquisition of easements or other rights

8.—(1) The undertaker may seek a compulsory purchase order on behalf of a gas transporter where—

(a) the gas transporter has agreed in writing with the undertaker that for the purpose of the authorised development it is necessary or expedient to remove gas apparatus owned by the gas transporter within the Order limits and to install and keep installed gas apparatus in substitution for it on, under or over specified land; or

(b) the gas transporter has agreed in writing that the undertaker may seek an easement or other rights over land on behalf of the gas transporter in respect of the specified land.

(2) Subject to sub-paragraph (3) and (4), where a compulsory purchase order is sought by the undertaker pursuant to sub-paragraph (1), the Secretary of State may authorise the relevant gas transporter to purchase compulsorily an easement or right over the specified land.

(3) Schedule 3 of the Gas Act 1986 shall apply in respect of powers of compulsory purchase sought pursuant to this paragraph.

(4) Where the undertaker seeks a compulsory purchase order on behalf of a gas transporter pursuant to this paragraph, all negotiations of compensation shall be undertaken by the undertaker, unless otherwise agreed with the gas transporter, and any consideration or compensation agreed or determined in respect of any easements or rights acquired shall be payable by the undertaker only (unless otherwise agreed with the operator).

(5) In this paragraph—

"alternative apparatus" means alternative gas apparatus adequate to enable the gas transporter in question to fulfil its statutory functions in a manner not less efficient than previously;

"gas apparatus" means any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purpose of gas supply;

"gas transporter" has the meaning given in Part 1 of the Gas Act 1986; and

"specified land" means land within or outside the Order limits on, under or over which a gas transporter agrees, pursuant to sub-paragraph (1), that alternative apparatus should be relocated in substitution for existing gas apparatus.

SCHEDULE 13

Article 37

PROTECTIVE PROVISIONS

PART 1

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

Application

1. For the protection of the affected undertakers referred to in this Part of this Schedule (save for any utility undertakers which are specifically protected by any other Part of this Schedule, which will take precedence) the following provisions have effect, unless otherwise agreed in writing between the undertaker and the affected undertaker concerned.

Interpretation

2. In this Part of this Schedule—

"affected undertaker" means—

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

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

(c) a water undertaker within the meaning of the Water Industry Act 1991(**b**); or

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

for the area of the authorised development but, for the avoidance of doubt, does not include the undertakers specified in Parts 3 to 7 of this Schedule, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained;

"alternative apparatus" means alternative apparatus adequate to enable the affected undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electric plant (as defined in the 1989 Act), belonging to or maintained by that affected undertaker;

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

(c) in the case of a water undertaker—

(i) mains, pipes or other apparatus belonging to or maintained by that affected undertaker for the purposes of water supply; and

(ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991;

(d) in the case of a sewerage undertaker—

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

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(**a**) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and was further amended by section 76 of the Utilities Act 2000 (c. 27).

(**b**) 1991 c. 56.

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

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"functions" includes powers and duties; and

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

Precedence of the 1991 Act in respect of apparatus in the streets

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the affected undertaker are regulated by the provisions of Part 3 (water supply) of the Water Industry Act 1991.

Removal of apparatus

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

(2) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (1), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the affected undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(3) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the affected undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(4) The affected undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44 (arbitration) and after the grant to the affected undertaker of any such facilities and rights as are referred to in sub-paragraph (1) or (2), 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.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the affected undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the affected undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the affected undertaker.

Facilities and rights for alternative apparatus

5.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to an affected undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the affected undertaker in question or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

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

Retained apparatus

6.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 4(1) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 4(1), the undertaker must submit to the affected undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the affected undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the affected undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by an affected undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an affected undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 5 apply as if the removal of the apparatus had been required by the undertaker under paragraph 4(1).

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

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the affected undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

7.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an affected undertaker the reasonable expenses incurred by that affected undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 4(1).

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

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

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

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 44 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the affected undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

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

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

(5) An amount which apart from this sub-paragraph would be payable to an affected undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the affected undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

8.—(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 4(1), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an affected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker must—

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

(b) provide reasonable compensation to that affected undertaker for any other expenses, loss, damages, penalty or costs incurred by the affected undertaker,

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

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

(3) An affected undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker which, if it withholds such consent, will have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Enactments and agreements

9. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an affected undertaker in respect of any

apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

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

11. In this Part of this Schedule—

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

"the code rights" has the same meaning as in the Paragraph 3 of the electronic communications code(**b**);

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

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

"electronic communications code network" means—

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

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

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

"infrastructure system" has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

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

12. The exercise of the powers conferred by this Order is subject to Part 10 (undertaker's works affecting electronic communications apparatus) of the electronic communications code.

13.—(1) Subject to sub-paragraph (2), if as a result of the authorised development or its construction, or of any subsidence resulting from any of the authorised development—

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

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

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other reasonable expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(**a**) 2003 c. 21.
(**b**) See section 106 of the 2003 Act. Section 106 was amended by section 4(3) of the Digital Economy Act 2017 (c. 30).

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

14. The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker and if such consent, is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

15. 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 44 (arbitration).

16. 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.

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

PART 3

FOR THE PROTECTION OF SOUTHERN WATER

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

19. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable Southern Water to fulfil its statutory functions in not less efficient a manner than previously;

"apparatus" means—

(a) any works, mains, pipes, pumping stations, connections, water booster stations or any other ancillary apparatus belonging to or maintained by Southern Water for the purposes of water supply, water removal or drainage;

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

(c) 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 the Water Industry Act 1991 or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at a future date) of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 (general interpretation) of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"functions" includes powers and duties;

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

"plan" includes all designs, drawings, design principles, site locations, accesses, soil reports, programmes, calculations, risk assessments, standoff distances, sections, drawings, specifications, method statements and other documents that are reasonably necessary to properly and sufficiently to describe the works to be executed; and

"Southern Water" means Southern Water Services Limited, company number 02366670, whose registered office is at Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX.

Precedence of the 1991 Act in respect of apparatus in streets

20. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Southern Water are regulated by the provisions of Part 3 (water supply) of the 1991 Act.

Apparatus in closed streets

21. Regardless of the temporary closure or diversion of any street under the powers conferred by article 17 (public rights of way – stopping up and vehicular use on public rights of way), Southern Water is at liberty at all times to take all necessary access across any such closed street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the closure or diversion was in that street subject to serving 7 days' notice on the undertaker (save in cases of emergency).

Removal of apparatus

22.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that Southern Water's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of Southern Water 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 Southern Water in accordance with sub-paragraphs (1) to (8) and until—

(a) any requirement for a permit under the Environmental Permitting (England and Wales) Regulations 2016(**a**) or other legislation and any other associated consents are obtained, and any approval or agreement required from Southern Water on alternative locations as a result of such re-location are approved, such approvals from Southern Water not to be unreasonably withheld or delayed; and

(b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Southern Water has agreed all of the documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Southern Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Southern Water 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 Southern Water reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Southern Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Southern Water must, on receipt of a written notice to that effect

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

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 save that this obligation shall not extend to the requirement for Southern Water to use its compulsory purchase powers to this end unless it elects to do so.

(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 Southern Water and the undertaker or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(5) Southern Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44 (arbitration) and after the grant to Southern Water of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to Southern Water 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, and Southern Water will refer to its own guidance, policies and specifications for carrying out works of that nature, and if agreed by Southern Water (such agreement not to be unreasonably withheld or delayed), that work, instead of being executed by Southern Water, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Southern Water.

(7) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker will, before taking any steps that will trigger the need for those substitution works, use best endeavours to comply with Southern Water's reasonable requests for a reasonable period of time to enable Southern Water to—

(a) make network contingency arrangements; or

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

(8) 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 the standoff distances agreed between the parties under sub-paragraph (2) and for the purposes of a sewer or rising main is the standard protective strip which is the strip of land falling 3 metres either side of the sewer or rising main or so as to require any special measures that are outside industry standard measures other than in accordance with paragraph 26 (retained apparatus) below unless otherwise agreed with Southern Water, such agreement not to be unreasonably withheld or delayed, with such provision being brought promptly to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker.

Access

23.—(1) If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is obstructed or rendered materially less convenient (in Southern Water's opinion, acting reasonably) the undertaker must provide such alternative means of access to such apparatus as will enable Southern Water to maintain or use the apparatus no less effectively or conveniently than was possible before such obstruction.

(2) Where the undertaker proposes to provide to Southern Water an alternative means of access to any apparatus in compliance with sub-paragraph (1), the powers conferred by the Order must not be exercised until Southern Water has approved the proposed alternative means of access (such approval not to be unreasonably withheld or delayed).

Facilities and rights for alternative apparatus

24.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Southern Water facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Southern Water or in default of agreement settled by arbitration in accordance with article 44 (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 Southern Water than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Southern Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Identification and notification of apparatus

25. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets must immediately be given to Southern Water and afforded the same protection of other Southern Water assets.

Retained apparatus

26.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used pursuant to the powers of this Order that are near to, or will or may affect, any apparatus where the removal of which has not been required by the undertaker, the undertaker must submit to Southern Water for approval a plan, section and description of the works to be executed.

(2) The undertaker must not commence the works outlined in sub-paragraph (1) until the plan of works has been approved by Southern Water (such approval not to be unreasonably withheld or delayed).

(3) Those works must be executed only in accordance with the plan, section and description submitted and approved under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (4) by Southern Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Southern Water is entitled to watch and inspect the execution of those works.

(4) Any reasonable requirements made by Southern Water under sub-paragraph (3) shall 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.

(5) If the revised plan of works is not approved within 21 days, either the undertaker or Southern Water may require a meeting to be held within 28 days of submission of the revised plan of works between the chief engineers or a suitably qualified alternative representative of the undertaker and Southern Water to agree the plan of works.

(6) If the undertaker and Southern Water fail to reach an agreement on the plan of works, the dispute shall be resolved in accordance with article 44 (arbitration).

(7) If Southern Water 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 18 to 20 and 23 to 25 apply as if the removal of the apparatus had been required by the undertaker under paragraph 22(2).

(8) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously

submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

(9) The undertaker is not required to comply with sub-paragraph 26(1) in a case of emergency but in that case it must give to Southern Water notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(10) For the purposes of sub-paragraph (1), works are deemed to be in land near Southern Water's apparatus if those works fall within the standoff distances agreed between the parties under sub-paragraph (2).

Expenses and costs

27.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Southern Water the reasonable expenses incurred by Southern Water in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 22(2).

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

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

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

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 44 (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 Southern Water in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

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

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

(5) An amount which apart from this sub-paragraph would be payable to Southern Water in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Southern Water 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.

28.—(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 22(1) any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Southern Water, or there is any interruption in any service provided, or in the supply of any goods, by Southern Water, the undertaker must—

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

(b) provide reasonable compensation to Southern Water for any other expenses, loss, damages, penalty or costs incurred by Southern Water,

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

(2) The fact that any act or thing may have been done by Southern Water on behalf of the undertaker or in accordance with a plan approved by Southern Water or in accordance with any requirement of Southern Water or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

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

(4) Southern Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker which, if it withholds such consent, will have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Arbitration

29. For the avoidance of doubt any difference under any provision of this Part of this Schedule, unless otherwise provided for, shall be referred to and settled by arbitration in accordance with article 44 (arbitration), 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.

Acquisition of land

30. Regardless of any provision in the Order or anything shown on the land plans, the undertaker must not acquire any apparatus other by agreement with Southern Water.

Enactments and agreements

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

PART 4

FOR THE PROTECTION OF SOUTH EASTERN POWER NETWORKS PLC

Application

32.—(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 undertakers concerned.

(2) The provisions of this Part of this Schedule will not apply to any authorised development carried out by UK Power Networks or National Grid pursuant to article 6 (benefit of the Order) or article 7 (consent to transfer benefit of the Order) of this Order.

Interpretation

33. 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 electric lines and electrical plant (as defined in section 64(1) of the Electricity Act 1989) belonging to or maintained by the utility undertaker;

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

"specified works" means any of the authorised development which—

(a) will or may be situated within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 37(2) or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 37(2) or otherwise; and

"utility undertaker" means South Eastern Power Networks plc, whose registered office is at Newington House, 237, Southwark Bridge Road, London, SE1 6NP.

On street apparatus

34. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in stopped up rights of way

35.—(1) Where any public right of way is closed or stopped up under article 17 (public rights of way – stopping up and vehicular use on public rights of way) and the utility undertaker has apparatus in that public right of way, the utility undertaker will continue to have the same powers and rights in respect of that apparatus as it enjoyed immediately before the closure or stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 37 (removal of apparatus) or the power of the undertaker to carry out works under paragraph 39 (retained apparatus).

(2) Regardless of the temporary closure or diversion of any street under the powers of article 10 (street works and temporary closure of streets and private means of access), the utility undertaker is at liberty at all times to take all necessary access across any such closed or diverted street and to execute and do all such works and things in any such street 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 street.

Acquisition of land

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

Removal of apparatus

37.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of the

utility undertaker in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any specified 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 no less than 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the 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 and use 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 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, save that this obligation does not extend to the requirement for the utility undertaker to use its powers of compulsory acquisition unless it elects to do so.

(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 and the undertaker or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(5) The utility undertaker must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44 (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 that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by 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.

Facilities and rights for alternative apparatus

38.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to the utility undertaker necessary facilities and rights in land for the construction and maintenance of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms as may be agreed between the undertaker and the utility undertaker and must be no less favourable on the whole to the utility undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed, unless otherwise agreed by the utility undertaker, such agreement not to be unreasonably withheld.

(2) If the facilities and rights to be afforded by the undertaker and agreed with the utility undertaker under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the utility undertaker 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 45 (arbitration) and the arbitrator must make such provision for the payment of compensation by the undertaker to the utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

39.—(1) Not less than 28 days before the commencement of any specified works, the undertaker must submit to the utility undertaker a plan of the works to be executed.

(2) The plan to be submitted to the utility undertaker under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

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

(c) the manner of their construction or renewal;

(d) the position of all apparatus; and

(e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

(3) The undertaker must not commence any specified works until the utility undertaker has given written approval of the plan so submitted.

(4) Any approval of the utility undertaker given under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph 39(5);

(b) must not be unreasonably withheld; and

(c) will be deemed approved if no response is provided by the utility undertaker within 28 days.

(5) The utility undertaker may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must be executed in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph 39(5) 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 will be entitled to watch and inspect the execution of those works where reasonably practicable to do so and in accordance with any relevant health and safety legislation.

(7) Any requirements made by the utility undertaker under sub-paragraph 39(5) are to be made within a period of 14 days beginning with the date on which the plan is submitted to it.

(8) If the utility undertaker, in accordance with sub-paragraph 39(5) 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 32 to 34 and 36 to 38 apply as if the removal of the apparatus had been required by the undertaker under paragraph 37(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 28 days before commencing the execution of any specified works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(10) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency works but in that case it must give to the utility undertaker notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph 39(5) in so far as is reasonably practicable in the circumstances.

(11) In sub-paragraph (10), "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Expenses and costs

40.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the utility undertaker within 30 days of receipt of an itemised VAT invoice from the utility undertaker all expenses reasonably and properly incurred by the utility undertaker in, or in connection with the inspection, removal, alteration, relaying, replacing or protection of any apparatus or the construction of any alternative apparatus which may be required in consequence of the execution of any specified works.

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

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

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

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 44 (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 by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus 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 specified works; 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) Any amount which apart from this sub-paragraph would be payable to the 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.

41.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of the utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the utility undertaker, the undertaker must—

(a) bear and pay within 30 days of receipt of an itemised invoice from the utility undertaker the cost reasonably and properly incurred by the utility undertaker in making good such damage or restoring the supply; and

(b) reimburse the utility undertaker for and indemnify for any other losses, expenses, demands, proceedings, damages, claims, penalty or costs properly incurred by or recovered from the utility undertaker, by reason or in consequence of any such damage or interruption or the utility undertaker becoming liable to any third party as aforesaid other than arising from any default of the utility undertaker.

(2) The fact that any act or thing may have been done by the utility undertaker on behalf of the undertaker or in accordance with a plan approved by the utility undertaker or in accordance with any requirement of utility undertaker or under its supervision will not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1), unless utility undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan agreed by utility undertaker in accordance with paragraph 37(4) and paragraph 39(4).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of the utility undertaker , its officers, servants, contractors or agents;

(b) any part of the specified works carried out by the utility undertaker in the exercise of any functions conferred by this Order pursuant to a transfer or grant under article 7 (consent to transfer benefit of the Order); 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) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) The utility undertaker must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must be made without the consent of the undertaker and, if such consent is withheld, the undertaker shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) The utility undertaker 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) The utility undertaker must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies and if reasonably requested to do so by the undertaker the utility undertaker must provide an explanation of how the claim has been minimised.

Enactments and agreements

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

Cooperation

43.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or the utility undertaker requires the removal of apparatus under paragraph 37(2) or the utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 39 (retained apparatus), the undertaker must use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and the utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the utility undertaker'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

44. If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to

that apparatus as will enable the utility undertaker to maintain or use the apparatus no less effectively than was possible before the obstruction.

Arbitration

45. Any difference or dispute arising between the undertaker and the utility undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the utility undertaker, be determined by arbitration in accordance with article 44 (arbitration).

PART 5

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

Application

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

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 7 (consent to transfer benefit of the Order)—

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

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

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but without prejudice to paragraph 55(3)(b)).

Interpretation

47. In this Part of this Schedule—

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance" means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than a sum to be notified to the undertaker by National Grid and agreed in writing between the parties. Evidence of that insurance must be provided to National Grid on request. Such insurance shall be maintained—

(a) during the construction period of the specified works; and

(b) after the construction period of the specified 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 National Grid; and

(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 a sum to be notified to the undertaker by National Grid and agreed in writing between the parties;

"acceptable security" means either—

(a) a parent company guarantee from a parent company in favour of National Grid to cover the undertaker's liability to National Grid to a total liability cap to be notified to the undertaker by National Grid and agreed in writing between the parties (in a form reasonably satisfactory to National Grid), and where required by National Grid accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid to cover the undertaker's liability to National Grid for an amount to be agreed in writing between the undertaker and National Grid (both parties acting reasonably and in a form reasonably satisfactory to National Grid);

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

"apparatus" means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule;

"commence" and "commencement" in this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"functions" includes powers and duties;

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

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, must require the undertaker to submit for National Grid's approval a ground mitigation scheme;

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

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

"incentive deduction" means any incentive deduction National Grid receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

"maintain" and "maintenance" includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid: construct, use, repair, alter, inspect, renew or remove the apparatus;

"NESO" means as defined in the STC;

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

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

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which—

(a) will or may be situated over or within (but excluding under) 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 51(2) (removal of apparatus) or otherwise; and

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 51(2) (removal of apparatus) or otherwise; and

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

"STC" means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NESO as modified from time to time;

"STC claims" means any claim made under the STC against National Grid arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid's transmission system which arises as a result of the authorised works; and

"transmission owner" means as defined in the STC.

On street apparatus

48. Except for paragraphs 48 (apparatus of National Grid in closed streets), 53 (retained apparatus: protection), 54 (expenses) and 55 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in closed streets or in public rights of way that are closed or stopped up

49.—(1) Where any street is closed under article 10 (street works and temporary closure of streets and private means of access) or stopped up under article 17 (public rights of way – stopping up and vehicular use on public rights of way) as specified in Schedule 8 (public rights of way) to this Order, if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the closure or stopping up and the undertaker must grant to National Grid, or use reasonable endeavours to procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the closure of any such street but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 51 (removal of apparatus) or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 53 (retained apparatus: protection).

(2) Notwithstanding the temporary closure or diversion of any street under the powers of article 10 (street works and temporary closure of streets and private means of access) or are stopped up under article 17 (public rights of way – stopping up and vehicular use on public rights of way) as specified in Schedule 8 (public rights of way) to this Order, National Grid is at liberty at all times to take all necessary access across any such closed street or stopped up public right of way and to execute and do all such works and things in, upon or under any such street as may be reasonably

necessary or desirable to enable it to maintain any apparatus which at the time of the closure or diversion was in that street.

Acquisition of land

50.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid , and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between National Grid and the undertaker, the undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule will prevail.

(4) Any agreement or consent granted by National Grid under paragraph 53 (retained apparatus: protection) or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

51.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in direct consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its satisfaction (taking into account paragraph 52(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation will not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to do so.

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

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

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid (in National Grid's opinion, acting reasonably)than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter may be referred to arbitration in accordance with paragraph 59 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

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

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

(a) the exact position of the works;

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

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

(d) the position of all apparatus;

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

(f) any intended maintenance regimes;

(g) an assessment of risks of rise of earth issues; and

(h) a ground monitoring scheme, where required.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;

(f) written details of the operations and maintenance regime for any cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by National Grid's engineers; and

(h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

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

(5) Any approval of National Grid required under sub-paragraph (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8);

(b) must not be unreasonably withheld or delayed.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and National Grid must give notice of its requirement for such works within 14 days of the date of submission of a plan pursuant to sub-paragraph (1) (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the specified works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 46 to 48 and 50 to 52 apply as if the removal of the apparatus had been required by the undertaker under paragraph 51(2) (removal of apparatus).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised

development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under this Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

54.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised VAT invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 51(3) (removal of apparatus); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;

(b) the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

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

(d) the approval of plans under this part of this Schedule;

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

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

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

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 59 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this

Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

55.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and

(b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party and including STC claims or an incentive deduction other than arising from any default of National Grid.

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

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid pursuant to article 6 (benefit of the Order) or as a transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus, any authorised works yet to be executed

and not falling within this sub-paragraph will be subject to the full terms of this Part of this Schedule including this paragraph; or

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

(4) National Grid 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 its representations.

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

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

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

(8) Before carrying out any specified works the undertaker must put in place acceptable security, and evidence of such acceptable security is to be provided on request and thereafter maintained for the duration of the carrying out of any specified works.

(9) Any dispute between the undertaker and National Grid regarding the terms, cover or insured level of the insurance policy or regarding the form and level of acceptable security shall be resolved in accordance with paragraph 59 (arbitration).

Enactments and agreements

56. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Cooperation

57.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 51(2) (removal of apparatus) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 53 (retained apparatus: protection), the undertaker will use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid will use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

58. If in consequence of the agreement reached in accordance with paragraph 50(1) (acquisition of land) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

59. Save for any differences or disputes arising under paragraph 51(2), 51(4), 53(1) and 54, any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 44 (arbitration).

Notices

60. Notwithstanding article 42 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 53 (retained apparatus: protection) must be submitted using the LSBUD system (https://lsbud.co.uk/) or to such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 6

FOR THE PROTECTION OF NATIONAL GRID INTERCONNECTORS LIMITED AS ELECTRICITY UNDERTAKER

Application

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

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid Interconnectors, where the benefit of this Order is transferred or granted to another person under article 7 (consent to transfer benefit of the Order) written notice of the transfer or grant must be given to National Grid Interconnectors on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid Interconnectors (but without prejudice to paragraph 68(3)(b) (indemnity)).

Interpretation

62. In this Part of this Schedule—

"apparatus" means any electric lines, cables or electrical plant as defined in the Electricity Act 1989 and including convertor stations and sub-stations, belonging to or maintained by National Grid Interconnectors together with any apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid Interconnectors for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule;

"commence" and "commencement" in this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by National Grid Interconnectors setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, must require the undertaker to submit for National Grid Interconnectors' 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 in land includes a reference to apparatus under, over, across, along or upon such land;

"Incentive Deduction" means any incentive deduction National Grid Interconnectors receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

"maintain" and "maintenance" includes the ability and right to do any of the following in relation to any apparatus of National Grid Interconnectors: construct, use, repair or inspect the apparatus;

"National Grid Interconnectors" means National Grid Interconnectors Limited, company number 3385525, who registered office is at 1-3 Strand, London, WC2N 5EH;

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

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which—

(a) will or may be situated over or within 15 metres measured in any direction of any apparatus; and/or

(b) may in any way adversely affect any apparatus.

"STC" means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NESO as modified from time to time; and

"STC Claims" means any claim made under the STC against National Grid Interconnectors arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Interconnectors' transmission system which arises as a result of the authorised works.

On street apparatus

63. Except for paragraphs 64 (apparatus of National Grid Interconnectors Limited in closed streets), 66 (apparatus: protection), 67 (expenses) and 68 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights

and apparatus of National Grid Interconnectors, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid Interconnectors are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid Interconnectors Limited in closed streets

64.—(1) Where any street is closed under article 10 (street works and temporary closure of streets and private means of access), if National Grid Interconnectors has any apparatus in the street or accessed via that street National Grid Interconnectors has the same rights in respect of that apparatus as it enjoyed immediately before the closure and the undertaker must grant to National Grid Interconnectors, or procure the granting to National Grid Interconnectors of, legal easements reasonably satisfactory to National Grid Interconnectors in respect of such apparatus and access to it prior to the closure of any such street but nothing in this paragraph affects any rights of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 66 (apparatus: protection).

(2) Notwithstanding the temporary closure or diversion of any street under the powers of article 10 (street works and temporary closure of streets and private means of access), National Grid Interconnectors is at liberty at all times to take all necessary access across any such closed street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the closure or diversion was in that street.

Acquisition of land

65.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not—

(a) appropriate or acquire or take temporary possession of any land or apparatus of National Grid Interconnectors; or

(b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right or apparatus of National Grid Interconnectors,

otherwise than by agreement between the undertaker and National Grid Interconnectors (such agreement not to be unreasonably withheld).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid Interconnectors and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid Interconnectors or affect the provisions of any enactment or agreement regulating the relations between National Grid Interconnectors and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid Interconnectors requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid Interconnectors and the undertaker (each acting reasonably) and which must be no less favourable on the whole to National Grid Interconnectors, unless otherwise agreed by National Grid Interconnectors, and it will be the responsibility of the undertaker to use best endeavours to procure or secure (or both) 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) Any agreement or consent granted by National Grid Interconnectors under paragraph 66 (apparatus: protection) or any other paragraph of this Part of this Schedule must not be taken to constitute agreement under sub-paragraph (1).

Apparatus: protection

66.—(1) Not less than 28 days before the commencement of any specified works the undertaker must submit to National Grid Interconnectors a plan of the works to be executed and seek from National Grid Interconnectors details of the underground extent of their electricity assets.

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

(a) the exact position of the works;

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

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

(d) the position of all apparatus;

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

(f) any intended maintenance regimes;

(g) an assessment of risks of rise of earth issues; and

(h) a ground monitoring scheme, where required.

(3) The undertaker must not commence any works to which sub-paragraph (2) applies until National Grid Interconnectors has given written approval of the plan so submitted.

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

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7);

(b) must not be unreasonably withheld; and

(c) will be deemed approved if no response is provided by National Grid Interconnectors within 28 days of a request for approval being submitted by the undertaker.

(5) In relation to any work to which sub-paragraph (2) applies National Grid Interconnectors may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraph (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Grid Interconnectors and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Grid Interconnectors for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid Interconnectors will be entitled to watch and inspect the execution of those works.

(7) Where National Grid Interconnectors requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid Interconnectors' satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and National Grid Interconnectors will give notice of its requirement for such works within 14 days of the date of submission of a plan pursuant to sub-paragraph (1) (except in an emergency).

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

(9) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid Interconnectors notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

Expenses

67. Save where otherwise agreed in writing between National Grid Interconnectors and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid Interconnectors within 30 days of receipt of an itemised VAT invoice or claim from National Grid Interconnectors all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid Interconnectors in, or in connection with, the inspection or protection of any apparatus which may be required in consequence of the execution of any authorised works including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Grid Interconnectors in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid Interconnectors as a consequence of National Grid Interconnectors exercising any compulsory acquisition powers in the Order transferred to or benefitting National Grid Interconnectors;

(b) the approval of plans under this part of this Schedule;

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

(d) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

Indemnity

68.—(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 it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid Interconnectors, or there is any interruption in any service provided, or in the supply of any goods, by National Grid Interconnectors, or National Grid Interconnectors becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from National Grid Interconnectors the cost reasonably and properly incurred by National Grid Interconnectors in making good such damage or restoring the supply; and

(b) indemnify National Grid Interconnectors for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid Interconnectors, by reason or in consequence of any such damage or interruption or National Grid Interconnectors becoming liable to any third party and including STC Claims or Incentive Deduction other than arising from any default of National Grid Interconnectors.

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

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid Interconnectors, its officers, servants, contractors or agents;

(b) any authorised works or any other works authorised by this Part of this Schedule carried out by National Grid Interconnectors pursuant to article 6 (benefit of the Order) or 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 7 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus, any authorised works yet to be executed and not falling within this sub-paragraph 68(3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph; or

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

(4) National Grid Interconnectors 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 its representations.

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

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

Enactments and agreements

69. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid Interconnectors and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid Interconnectors 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

70.—(1) Where in consequence of the proposed construction of any part of the authorised works National Grid Interconnectors makes requirements for the protection of apparatus under paragraph 66 (apparatus: protection), the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid Interconnectors' undertaking and National Grid Interconnectors must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid Interconnectors' 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

71. If in consequence of the agreement reached in accordance with paragraph 65(1) (acquisition of land) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid Interconnectors to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

72. Any difference or dispute arising between the undertaker and National Grid Interconnectors under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid Interconnectors, be determined by arbitration in accordance with article 44 (arbitration).

Notices

73. Notwithstanding article 42 (service of notices), any plans submitted to National Grid Interconnectors by the undertaker pursuant to paragraph 66 (apparatus: protection) must be submitted using the LSBUD system (https://lsbud.co.uk/) or to such other address as National Grid Interconnectors may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 7

FOR THE PROTECTION OF NETWORK RAIL

74. 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 88 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

75. In this Part of this Schedule—

"asset protection agreement" means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993(**a**);

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;

"regulatory consents" means any consent or approval required under—

(a) the Railways Act 1993;

(b) the network licence; or

(c) any other relevant statutory or regulatory provisions,

(**a**) 1993 c. 43.

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; and

"undertaker" has the same meaning as in article 2 (interpretation) of this Order.

76.—(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.

77.—(1) The undertaker must not exercise the powers conferred by—

(a) article 3 (development consent granted by the Order);

(b) article 4 (maintenance of authorised development);

(c) article 14 (access to works)

(d) article 19 (discharge of water);

(e) article 20 (authority to survey and investigate the land);

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

(g) article 23 (statutory authority to override easements and other rights)

(h) article 25 (compulsory acquisition of rights and imposition of restrictive covenants);

(i) article 26 (private rights);

(j) article 28 (acquisition of subsoil and airspace only);

(k) article 34 (acquisition of wayleaves, easements and other rights);

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

(m) article 32 (temporary use of land for maintaining the authorised development);

(n) article 33 (statutory undertakers);

(o) article 43 (felling or lopping of trees or shrubs);

(p) the powers conferred by section 11(3) (powers of entry) of the 1965 Act;

(q) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;

(r) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016; and

(s) 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 33 (statutory undertakers), article 34 (acquisition of wayleaves, easements and other rights) or article 26 (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.

78.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

79.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 78(3) 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 76;

(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.

80. 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.

81. 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.

82.—(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 (during a period of 24 months after the completion of that work) in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations 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 78, 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 83(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.

83. 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 78 or in constructing any protective works under the provisions of paragraph 78(3) 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.

84.—(1) In this paragraph—

"EMI" means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 78(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 78(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 paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 78(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and

(d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 79.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 88(2) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 83(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 44 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

85. 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.

86. 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.

87. 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.

88.—(1) 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 (2); 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.

(2) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 36 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction, maintenance or operation of a specified work or the failure thereof;

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;

(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others; and

(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.

(3) 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.

(4) The sums payable by the undertaker under sub-paragraph (2) shall if relevant include a sum equivalent to the relevant costs.

(5) 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 (4) which relates to the relevant costs of that train operator.

(6) The obligation under sub-paragraph (4) 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 (5).

89. 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 88) 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).

90. 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.

91. 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 plans and land plans and described in the book of reference;

(b) any land, 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.

92. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

93. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (consent to transfer benefit of the Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

94. 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 41 (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.

95. In relation to any dispute arising under this part of this Part of this Schedule (except for those disputes referred to in paragraph 84(11)), the provisions of article 44 (arbitration) shall not apply and any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers.

PART 8

FOR THE PROTECTION OF LONDON ST PANCRAS HIGHSPEED

96. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the Company.

97. In this Part of this Schedule—

"CDM Regulations" means the Construction (Design and Management) Regulations 2015(**a**);

"Company" means HS1 Limited, trading as London St. Pancras Highspeed (company number 03539665, whose registered office is at 5th Floor, Kings Place, 90 York Way, London N1 9AG) and any HS1 Group Company which holds property for railway purposes;

"concession agreement" means the agreement between the Secretary of State for Transport and the Company for the design, construction, financing, operation, repair and maintenance of High Speed 1 as amended or supplemented from time to time;

"construction" includes execution, placing, alteration, testing and commissioning (and, where relevant, the removal, alteration, re-carrying out after testing/commissioning or re-testing/commissioning) and reconstruction and construct and constructed have corresponding meanings;

"contamination" means the presence of any substance at, in, on or under any given property, that is capable of causing harm to the environment;

"emergency" means fouling of the line, any plant and/or equipment failing and/or falling within the fence, anything touching the overheads, any breach of the security fence, or any activity which adversely affects the stability or safety of any earthwork or structure (including track, overheads and/or stanchions);

"the engineer" means an engineer appointed by the Company for the purposes of this Order;

"environment" means any one or more of—

(a) air (including air within natural or manmade structures, above or below ground);

(b) water (including water under or within land, or in drains or sewers, and surface, ground, coastal and inland waters);

(c) land (including surface land, sub-surface strata, land under water and natural and man-made structures); and

(d) living organisms (including humans) including the ecological systems of which they form part, and, in the case of man, his senses and his property;

"High Speed 1" means the high speed rail link between St Pancras in the London Borough of Camden and the Channel Tunnel Portal at Castle Hill, Folkestone, Kent and the international stations at St Pancras, Stratford and Ebbsfleet and Ashford and all associated track, facilities and installations, including the Waterloo Connection and the maintenance depots at Temple Mills and Singlewell;

"HS1 group company" means any subsidiary or holding company of the Company or of another subsidiary or holding company of the Company, as "subsidiary" and "holding company" are understood within section 1159, Companies Act 2006, but on the basis that the holding of not less than one quarter of voting rights shall be deemed to satisfy the condition in section 1159(1)(a);

"HS1 property" means any land (whether freehold or leasehold), easement, property interest, railway, infrastructure, structure (or any part of any of the foregoing) including works, apparatus or equipment, leased, owned, held or used by the Company for the purposes of High Speed 1 that may be affected by the authorised development;

(**a**) S.I. 2015/51.

"network licence" means the network licence, as is amended from time to time, granted to the Company by the Secretary of State in exercise of powers pursuant to the Railways Act 1993(**a**);

"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 HS1 property;

"protective works" means any works specified by the engineer under paragraph 100;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease; and

"specified work" means so much of any of the authorised development as is, or is to be, situated upon, across, under, over or within 15 metres of, or may (or whose maintenance may) in any way adversely affect, HS1 property.

98.—(1) Where under this Part of this Schedule the Company is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval is subject to the condition that the Company must comply with any relevant railway operational procedures, any obligations under statute and the concession agreement.

(2) In so far as any specified work or the acquisition or use of HS1 property or rights over HS1 property is or may be subject to railway operational procedures, the Company must—

(a) co-operate with the undertaker and use its reasonable endeavours to avoid delay and secure conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development under this Order.

99.—(1) The undertaker shall not exercise the powers conferred by articles 20 (authority to survey and investigate the land), 21 (compulsory acquisition of land), 23 (statutory authority to override easements and other rights), 25 (compulsory acquisition of rights and imposition of restrictive covenants), 26 (private rights), 28 (acquisition of subsoil and airspace only), 30 (temporary use of land for carrying out the authorised development), 32 (temporary use of land for maintaining the authorised development), 33 (statutory undertakers), and 38 (use of subsoil and airspace within the Order limits) of the Order or the powers conferred by section 11(3) of the Compulsory Purchase Act 1965 in respect of any HS1 property unless the exercise of such powers is with the consent of the Company.

(2) The undertaker shall not in the exercise of the powers conferred by the Order prevent pedestrian or vehicular access to any HS1 property, unless preventing such access is with the consent of the Company.

(3) The undertaker shall not under the powers of the Order acquire or use or acquire new rights over any HS1 property except with the consent of the Company.

100.—(1) Where the Company is asked to give its consent pursuant to this paragraph, such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

(2) The undertaker must, before commencing construction of any specified work, supply to the Company proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 44 (arbitration).

(3) The approval of the engineer under sub-paragraph (2) must not be unreasonably withheld, and if by the end of the period of 30 business days beginning with the date on which such plans have been supplied to the Company the engineer has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring

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(**a**) 1993 c. 43

the engineer to intimate approval or disapproval within a further period of 10 business days beginning with the date upon which the engineer receives written notice from the undertaker and if, by the expiry of the further 10 business days period specified in the written notice the engineer has not intimated approval or disapproval, the engineer is deemed to have refused the plans as submitted and the undertaker shall be entitled to refer the dispute for arbitration in accordance with the provisions of article 44 (arbitration) of this Order. Where the engineer notifies the undertaker that it withholds its approval under sub-paragraph (2) and gives its reasons, the undertaker shall resubmit such plans amended to address the engineer's reasons as soon as practicable and the provisions of this paragraph 100 shall apply to the revised plans.

(4) The undertaker shall ensure compliance with any conditions imposed by the engineer if and when approving any given plans.

(5) If the Company gives notice to the undertaker that it desires itself to construct any part of a specified work or protective work (including in either case some or all of the requisite design) which in the reasonable opinion of the engineer will or may affect the stability of HS1 property or the safe operation of traffic on High Speed 1 then, if the undertaker desires such part of the specified work to be constructed and subject to sub-paragraph (4), the Company must construct it (together with any adjoining part of the specified work which the undertaker reasonably requires to be constructed with that work with all reasonable dispatch 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.

(6) When signifying approval of the plans under sub-paragraph (2) the engineer may specify any protective works (whether temporary or permanent) which in the engineer's reasonable opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of HS1 property or the continuation of safe and efficient operation of High Speed 1 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 the Company, or by the undertaker, if the Company 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 the engineer's reasonable satisfaction.

(7) Without prejudice to the provisions of sub-paragraph (6), in a case of emergency the Company may elect to carry out itself any protective works or any alteration or addition (or other work) as may be specified under paragraph 104, in which case such work shall be carried out by the Company with all reasonable dispatch.

(8) Subject to sub-paragraph (9), if, in any case, the carrying out of the specified works requires the diversion or other alteration of any road or the alteration, removal, replacement or protection of any apparatus belonging to third parties (including mains, sewers, pipes, drains and cables), the undertaker shall be responsible for—

(a) obtaining all requisite consents and approvals for such works;

(b) ensuring such works do not significantly impact on any access or any use of any utilities by the Company; and

(c) meeting any and all costs, fees, charges and expenses associated with such works, including any compensation or other amounts payable to third parties.

(9) Where the Company is carrying out any specified works pursuant to sub-paragraph (5) and the carrying out of the specified works requires the diversion or other alteration of any road or the alteration, removal, replacement or protection of any apparatus belonging to third parties (including mains, sewers, pipes, drains and cables), the Company shall be responsible for—

(a) obtaining all requisite consents and approvals for such works; and

(b) ensuring such works do not significantly impact on any access or any use of any utilities by the undertaker.

101.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 100(5) 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 100;

(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 reasonably possible to HS1 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 the Company or the traffic on it and the use by passengers of HS1 property.

(2) The undertaker shall forthwith halt the carrying out of any specified work or protective work or do anything reasonably required by the engineer (including the carrying out of emergency works) to ensure the safety, security, stability, operation or maintenance of High Speed 1. The engineer shall notify the undertaker of the action required to be taken by the undertaker in order to rectify the situation. The undertaker shall be entitled to recommence performance of the specified work or protective work provided that they are in accordance with such action as the engineer requires the undertaker to take.

(3) If any damage to HS1 property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work by the undertaker or any person for whom the undertaker is responsible or a protective work carried out by the undertaker or any person for whom the undertaker is responsible, the undertaker must, regardless of any such approval, make good such damage and must pay to the Company all expenses properly and reasonably incurred by the Company and compensation for any direct loss which it may sustain by reason of any such damage, interference or obstruction.

(4) If the carrying out of the specified works or the protective works or any act, omission, neglect or default on the part of the undertaker or any person for whom the undertaker is responsible, results in any contamination which has the potential to adversely affect HS1 property, or disturbs or causes to be disturbed any existing contamination which has the potential to adversely affect HS1 property in addition to any other rights—

(a) the Company may give the undertaker a notice specifying the remedial action it reasonably requires and a reasonable period for the undertaker to do it; and

(b) the undertaker shall undertake the remedial action within the stated period at its own costs and to the Company's reasonable satisfaction.

(5) If the undertaker does not complete the remedial action within the stated period, the Company may do so and the undertaker shall pay the costs which the Company incurs in doing so plus 7% on account of overheads (on demand and as a debt) provided that any such delay could have been avoided by the undertaker acting reasonably.

(6) 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 the Company or its servants, contractors or agents, or any liability on the Company with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or the undertaker's employees, contractors or agents.

102. The undertaker must—

(a) at all times afford reasonable facilities to the engineer for access to a specified work or protective work during its construction; and

(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or protective work or the method of constructing it.

103. The Company must at all times afford reasonable facilities to the undertaker and the undertaker's agents for access to any works carried out by the Company under this Part of this Schedule during their construction and must supply the undertaker with such information as the undertaker may reasonably require with regard to such works or the method of constructing them.

104.—(1) If any permanent or temporary alterations or additions to HS1 property are reasonably necessary in consequence of the construction of a specified work or a protective work, or during a period of 12 months after the completion of that work in order to ensure the safety of HS1 property or the continued safe operation of the railway of the Company, such alterations and additions may be carried out by the Company and if the Company gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (and the notice must specify details of alterations and additions including the costs of carrying out, and in the case of any permanent alterations or additions, maintaining, working and, when necessary, renewing such alterations or additions), the undertaker must pay to the Company 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 properly and reasonably incurred by the Company in maintaining, working and, when necessary, renewing any such alterations or additions provided the undertaker acting reasonably approves the costs contained in the notice provided under this paragraph prior to the works being carried out.

(2) If during the construction of a specified work or a protective work by the undertaker, the Company gives notice to the undertaker that the Company desires itself to construct that part of the specified work or protective work which in the reasonable opinion of the engineer is endangering the stability of HS1 property or the safe operation of traffic on High Speed 1 then, if the undertaker decides that part of the specified work or protective work is to be constructed, the Company must assume construction of that part of the specified work or protective work and the undertaker must, regardless of any such approval of a specified work or protective work under paragraph 100, pay to the Company all expenses properly and reasonably incurred by the Company and compensation for any direct loss which it may suffer by reason of the execution by the Company of that specified work or protective work provided that the undertaker is not liable under this paragraph for any injury, loss, damage, costs arising from the negligence of the Company or any person for whom it is responsible in respect of any specified or protective works under.

(3) If the cost of maintaining, working or renewing HS1 property are reduced in consequence of any such alterations or additions a capitalised sum representing such saving is to be notified to the undertaker by the Company as soon as reasonably practicable and is to be set off against any sum payable by the undertaker to the Company under this paragraph.

(4) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 105 provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(5) Other than as expressly set out in this Part of this Schedule, the Company shall have no liability to the undertaker arising out of or in consequence of any works to which this Part of this Schedule applies save where the Company or its contractors have been negligent. This applies whatever the manner in which liability might otherwise have arisen (whether for breach of contract, in tort, for breach of statutory duty or otherwise) and whether such liability would otherwise have arisen in respect of losses, damages, costs, liabilities, injuries, actions, claims, proceedings or matters suffered or incurred by or brought against the undertaker (including, without limitation, in respect of any works carried out pursuant to paragraphs 100(6), 100(8) or 104(2) of this Part of this Schedule) of the Company or otherwise.

(6) Where has liability to the undertaker under this Schedule shall use best endeavours to pursue its appointed consultant(s) and contractor(s) in respect of the remedying defects in the relevant works in accordance with the terms of their appointments. To the extent that recovers any monies from such consultant(s) or contractor(s) the Company shall pay or apply such monies as can, in its reasonable opinion, be apportioned works—

(a) first in meeting its own costs, liabilities and losses (current, anticipated or otherwise) (if any); and

(b) any balance then being paid to the undertaker.

105. The undertaker must repay to the Company all fees, costs, charges and expenses properly and reasonably incurred by the Company—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 100 or in constructing any protective works 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 reasonable approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work or a protective work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting HS1 property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work or a protective work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the reasonable opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or a protective work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of HS1 property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work or a protective work,

provided that the undertaker is not liable for any injury, loss, damage, costs nor is the undertaker required to repay any sums under paragraphs (a) to (e) which arise from, or in connection with, the Company in carrying out any specified works or protective works negligently.

106.—(1) In this paragraph—

"EMI" means, subject to sub-paragraph (2), electromagnetic interference with the Company's apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of the Company's apparatus;

"Company'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 the Company 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 the Company's apparatus carried out after approval of plans under paragraph 100(2) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with the Company (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 the Company as early as reasonably practicable to identify all of the Company's apparatus which may be at risk of EMI, and must continue to consult with the Company (both before and after formal submission of plans under paragraph 100(2)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) the Company must make available to the undertaker all information in the possession of the Company reasonably requested by the undertaker in respect of the Company's apparatus identified under paragraph (a); and

(c) the Company must allow the undertaker reasonable facilities for the inspection of the Company's apparatus identified under paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to the Company's apparatus, the Company must not withhold or delay its consent

unreasonably to modifications of the Company's apparatus, but the means of prevention and the method of their execution must be selected at the reasonable discretion of the Company, and in relation to such modifications paragraph 100(2) has effect subject to this paragraph.

(6) If at any time prior to the completion of the authorised development and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by the Company 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 the Company's apparatus.

(7) In the event of EMI having occurred—

(a) the undertaker must afford reasonable facilities to the Company for access to the undertaker's apparatus in the investigation of such EMI;

(b) the Company must afford reasonable facilities to the undertaker for access to the Company's apparatus in the investigation of such EMI; and

(c) the Company must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of the Company's apparatus or such EMI.

(8) Where the Company approves modifications to the Company's apparatus under sub-paragraphs (5) or (6)—

(a) the Company must allow the undertaker reasonable facilities for the inspection of the relevant part of the Company's apparatus; and

(b) any modifications to the Company's apparatus approved under those paragraphs must be carried out and completed by the undertaker in accordance with paragraph 101.

(9) If any changes in the operation of High Speed 1 cause EMI (whether or not measures have been adopted pursuant to sub-paragraph (3)) then the undertaker shall as quickly as reasonably practicable after notification by the Company of EMI take all measures necessary to remedy the same by way of modification to the source of such EMI or (as the case may be) further protective works or modification to the specified works or the Company's apparatus (subject to the Company's approval under sub-paragraph (5)).

(10) To the extent that it would not otherwise do so, and unless otherwise expressly stated, the indemnity in paragraph 110(1) applies to the costs and expenses reasonably incurred or losses suffered by the Company 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 the Company's apparatus) or in consequence of any EMI to which sub-paragraph (7) applies.

(11) For the purpose of paragraph 104(1) any modifications to the Company's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(12) In relation to any dispute arising under this paragraph the reference in article 44 (arbitration) to a single arbitrator to be agreed between the parties is to be read as a reference to an arbitrator being a member of the Institution of Engineering and Technology to be agreed.

107. If at any time after the completion of a specified work or a protective work, not being a work vested in the Company, the Company gives notice to the undertaker informing it that the state of maintenance of any part of the specified work or protective work appears to be such as adversely affects the operation of HS1 property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work or protective work in such state of maintenance as to not adversely affect HS1 property.

108. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work or a protective work in the vicinity of any railway belonging to the Company unless the undertaker has first consulted the Company and the undertaker must

comply with the Company'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.

109. Any additional expenses which the Company may properly and reasonably incur in altering, reconstructing or maintaining HS1 property under any powers existing at the making of this Order by reason of the existence of a specified work or a protective work must-provided that 5 business days' previous written notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker be repaid by the undertaker to the Company.

110.—(1) The undertaker must pay to the Company all reasonable and properly incurred costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (but subject always to the remaining provisions of this paragraph and to article 36 (no double recovery)) which may be occasioned to or reasonably incurred by the Company—

(a) by reason of the construction or maintenance of a specified work or a protective work or the failure of it by the undertaker or of any person in the undertaker's employ or of the undertaker's contractors; or

(b) by reason of any act or omission of the undertaker or of any person in the undertaker's employ or of the undertaker's contractors whilst engaged upon a specified work or a protective work,

and the undertaker must indemnify and keep indemnified the Company from and against each and all losses, claims, demands, actions, proceedings, damages, matters, costs, expenses and liabilities whatsoever arising in any way from, in connection with or relating to a specified work or a protective work or any such failure, act or omission; save where the Company or its contractors have been negligent and the fact that any act or thing may have been done by the Company 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 will not (provided it is done without negligence on the part of the Company or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(2) The indemnity in sub-paragraph (1) shall include but shall not be limited to any losses, claims, demands, actions, proceedings, damages, matters, costs, expenses and liabilities which arise out of the works in respect of—

(a) any disruption caused to High Speed 1 during the period of the specified works;

(b) any claims for personal injury or death to/concerning employees or third parties;

(c) any loss, damage or environmental damage (to include pollution, contamination, the presence of hazardous substances or waste, and nuisance) to High Speed 1 and/or HS1 property whether temporary or permanent or to any adjoining or neighbouring property (whether real or personal) belonging to, used by or in the possession of the Company and/or any third parties or for which the Company or any such third parties are responsible or liable which results from the specified works;

(d) any financial loss claims brought against the Company, any HS1 group company, any train or freight operating company, or any infrastructure manager, whether or not loss or damage to material property is suffered or incurred;

(e) the carrying out of the specified works, or the failure of any such works;

(f) any act, omission or neglect on the part undertaker, or any person involved in the carrying out of any specified works.

(3) During the period of the specified works, the undertaker shall procure that the undertaker's contractor is insured against the liabilities referred to herein for an amount to be agreed between the parties (both acting reasonably), and shall provide details of such insurance upon request by the Company. The specified works shall not commence until such insurance has been procured and where requested by the Company evidence of such insurance has been provided.

(4) The Company must—

(a) give the undertaker written notice of any such claims or demands as soon as reasonably possible after the Company became aware of any such claims or demands;

(b) not admit liability or make any offer to settle or settle or compromise any such claim or demand without the prior 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);

(c) take all reasonable steps to mitigate any liabilities relating to such claims or demands; and

(d) keep the undertaker informed in relation to the progress of any such claims and demands and pay due regard to the undertaker's reasonable representations in relation to them.

111. The Company must, on receipt of a request from the undertaker, from time to time, provide the undertaker free of charge with a written breakdown of the 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 110 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 under this Part of this Schedule (including any claim relating to those relevant costs).

112. In the assessment of any sums payable to the Company 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 the Company 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.

113. The undertaker and the Company may, subject to compliance with the terms of the concession agreement, enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any HS1 property shown on the works plans or land plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such HS1 property; and

(c) any rights and obligations (whether or not statutory) of the Company relating to any HS1 property or any lands, works or other property referred to in this paragraph.

114. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 (the provision of railway services) of the Railways Act 1993.

115. Unless and to the extent agreed otherwise in writing by the parties, to the extent that the protective works and the specified works constitute a single project for the purposes of the CDM Regulations, the undertaker is to act as the only client for the purposes of the CDM Regulations and is to indemnify the Company from and against any, each and all reasonably foreseeable and properly mitigated losses, claims, demands, actions, proceedings, damages, costs, expenses and liabilities arising directly from, in connection with or out of any breach (by the undertaker) of the CDM Regulations provided that the Company shall comply with all health and safety laws and with its obligations under the CDM Regulations, and shall (without prejudice to the generality of the aforesaid) provide all information required by the undertaker in a timely manner and co-operate with the undertaker so as to enable the undertaker to fulfil its duties as the client.

116. The undertaker must give written notice to the Company if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 7 (consent to transfer benefit of Order) of this Order in relation to HS1 property or any specified works and any such notice must be given no later than 10 business days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

117. The undertaker must no later than 20 Business Days from the date that the documents referred to in article 41 (certification of plans, etc.) are submitted to and certified by the Secretary of State in accordance with article 41 (certification of plans, etc.), provide a set of those documents to the Company in a digital format reasonably specified by the Company.

118. Any notice—

(a) from the undertaker which may be provided to the Company under this Part may be given by a contractor of the undertaker; and

(b) from the Company which may be provided to the undertaker, may be provided to the contractor of the undertaker,

provided the undertaker has provided written notification of the contractor to the Company.

SCHEDULE 14

Article 41

DOCUMENTS AND PLANS TO BE CERTIFIED

PART 1

DOCUMENTS AND PLANS

(1) Document name	*(2) Document reference*	*(3) Revision number*	*(4) Date*
AMS	7.17(A)	2	May 2025
Book of reference	4.1(A)	2	May 2025
Crown land plans	2.2	1	June 2024
Design principles	7.5(C)	4	April 2025
Environmental statement	5.1-5.4	1	June 2024
Land plans	2.1	1	June 2024
Outline battery safety management plan	7.16(A)	1	April 2025
Outline construction environmental management plan	7.8(A)	2	December 2024
Outline construction traffic management plan	7.9(C)	4	January 2025
Outline decommissioning environmental management plan	7.12	1	June 2024
Outline decommissioning traffic management plan	7.13(C)	4	January 2025
Outline landscape and ecological management plan	7.10(B)	3	January 2025
Outline operational management plan	7.11(A)	2	December 2024
Outline operational surface water drainage strategy	7.14(C)	4	March 2025
Outline rights of way and access strategy	7.15(A)	2	December 2024
Streets, rights of way and access plans	2.5	1	June 2024
Traffic regulations measures plans	2.4	1	June 2024
Vegetation removal plan	2.8	1	June 2024
Works plans	2.3(B)	3	December 2024

PART 2

SUBSTITUTE DOCUMENTS

(1) Originating document	*(2) Replacement or supplementary part*	*(3) Document reference*	*(4) Date*	*(5) Examination library reference*
Environmental statement	Chapter 2: Site and Context	5.2(A)	December 2024	[REP1-016]
Environmental statement	Chapter 3: Project Description	5.2(B)	April 2025	[REP5-009]
Environmental statement	Chapter 5: Alternatives and Design Evolution	5.2(A)	July 2024	[AS-101]
Environmental statement	Chapter 6: EIA Methodology	5.2(A)	December 2024	[REP1-020]
Environmental statement	Chapter 7: Cultural Heritage	5.2(A)	July 2024	[AS-011]
Environmental statement	Chapter 8: Landscape and Views	5.2(A)	July 2024	[AS-012]
Environmental statement	Chapter 10: Water Environment	5.2(B)	December 2024	[REP1-022]
Environmental statement	Chapter 12: Socio-economics	5.2(B)	December 2024	[REP1-024]
Environmental statement	Chapter 13: Traffic and Access	5.2(D)	January 2025	[REP3-012]
Environmental statement	Figures 10.1 - 10.8: Water Environment	5.3(A)	April 2025	[REP5-011]
Environmental statement	Appendix 8.2: LVIA Methodology	5.4(A)	July 2024	[AS-016]
Environmental statement	Appendix 8.10: LVIA Visualisations	5.4(A)	July 2024	[AS-014]
Environmental statement	Appendix 8.11: Cumulative LVIA Visualisations	5.4(A)	July 2024	[AS-015]
Environmental statement	Appendix 8.12: Cumulative Effects Table	5.4(B)	January 2025	[REP3-014]
Environmental statement	Appendix 9.3: Arboricultural Impact Assessment	5.4(A)	July 2024	[AS-017]
Environmental statement	Appendix 9.6: Air Quality Biodiversity Screening Report	5.4(A)	December 2024	[REP1-030]
Environmental	Appendix 9.7:	5.4(A)	December 2024	[REP1-032]

statement	Assessment of Effects			
Environmental statement	Appendix 10.2: Flood Risk Assessment	5.4(B)	April 2025	[REP5-015]
Environmental statement	Appendix 10.3: Water Framework Directive Assessment	5.4(A)	July 2024	[AS-013]
Environmental statement	Appendix 10.4: Aldington Flood Risk Storage Area Risk Assessment	5.4(A)	December 2024	[REP1-042]
Environmental Statement	Appendix 16.1: Soils and Agricultural Land Report	5.4(A)	April 2025	[REP5-013]

SCHEDULE 15

Article 43

HEDGEROWS

PART 1

REMOVAL OF IMPORTANT HEDGEROWS

(1) Area	*(2) Number of hedgerow and extent of removal*
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H3 on sheet 1 of the vegetation removal plan.
Ashford Borough Council	Removal of two sections of the hedgerow shown approximately within the areas identified H4 on sheet 1 of the vegetation removal plan.
Ashford Borough Council	Removal of two sections of the hedgerow shown approximately within the areas identified H5 on sheet 1 of the vegetation removal plan.
Ashford Borough Council	Removal of two sections of hedgerow shown approximately within the area identified H6 on sheet 1 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H10 on sheet 1 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H11 on sheets 1 and 2 of the vegetation removal plan.
Ashford Borough Council	Removal of two sections of hedgerow shown approximately within the areas identified H13 on sheet 1 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H17 on sheets 1 and 2 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H25 on sheets 1 and 2 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H26 on sheets 1 and 2 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H33 on sheets 2 and 3 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H49 on sheets 2 and 3 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H51 on sheets 2 and 3 of the vegetation removal plan.

PART 2

REMOVAL OF HEDGEROWS

(1) Area	*(2) Number of hedgerow and extent of removal*
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H22 on sheets 1 and 2 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H28 on sheet 2 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H34 on sheet 2 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H54 on sheet 3 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H60 on sheet 4 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H56 on sheet 5 of the vegetation removal plan.

SCHEDULE 16

Article 44

ARBITRATION RULES

Primary objective

1.—(1) The primary objective of these arbitration rales is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within four months from the date the arbitrator is appointed pursuant to article 44 (arbitration) of the Order.

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

Time periods

2.—(1) All time periods in these arbitration rules will be measured in days and this is to include weekends, but not bank or public holidays.

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

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

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

Timetable

3.—(1) The timetable for the arbitration is to be that set out in sub-paragraphs (2) to (4) unless amended in accordance with paragraph 5(3).

(2) Within 14 days of the arbitrator being appointed, the claimant must provide both the respondent and the arbitrator with—

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

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

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

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

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

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

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

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

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

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

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

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

Procedure

4.—(1) The parties' pleadings, witness statements and expert reports (if any) must be concise. No single pleading is to exceed 30 single-sided A4 pages using 10pt Arial font.

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

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

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

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

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

(7) There will be no process of examination and cross-examination of experts, but the arbitrator will invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the arbitrator's questions. Prior to the hearing the procedure for the expert(s) will be that—

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

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

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

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

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

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

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

Arbitrator's powers

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996(**a**), including the non-mandatory sections, save where modified by these arbitration rules in this Schedule.

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

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

(a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice; and

(b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the arbitrator's fees and expenses.

Costs

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 will bear them or in what proportion they will be borne by the parties.

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

Confidentiality

7.—(1) Subject to sub-paragraphs (2) and (3) the parties agree that any hearings held as part of the arbitration will be open to and accessible by the public.

(2) The arbitrator may direct that the whole or part of a hearing is to be private or any documentation to be confidential where it is necessary in order to protect commercially sensitive information.

(3) Nothing in this paragraph will prevent any disclosure of a document by a party pursuant to an order of a court in England and Wales or where disclosure is required under any enactment.

(**a**) 1996 c. 23.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises EPL 001 Limited to construct a new solar power generating station on land located to the north of the village of Aldington in Kent and to carry out all associated works.

The Order also makes provision for the construction, operation, maintenance and decommissioning of the authorised development.

A copy of the plans, the environmental statement and other documents mentioned in this Order and certified in accordance with article 41 (certification of plans, etc.) of this Order may be inspected free of charge during working hours at Ashford Borough Council Offices, Civic Centre, Tannery Lane, Ashford, Kent TN23 1PL.

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