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STATUTORY INSTRUMENTS

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**2020 No. 847**

**INFRASTRUCTURE PLANNING**

**The Immingham Open Cycle Gas Turbine Order 2020**

*Made* - - - - *7th August 2020*

*Coming into force* - - *1st September 2020*

An application under section 37 (applications for Orders granting development consent) of the Planning Act 2008<sup>(1)</sup> (the “2008 Act”) has been made to the Secretary of State for an Order granting development consent.

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapters 3 and 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010<sup>(2)</sup>. The single appointed person having considered the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 83<sup>(3)</sup> of the 2008 Act, submitted a report and recommendation to the Secretary of State.

The Secretary of State having considered the representations made and not withdrawn, the report and recommendation of the single appointed person and having taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017<sup>(4)</sup> and having had regard to the documents and matters referred to in section 104(2) (decisions in cases where national policy statement has effect) of the 2008 Act has determined to make an Order granting development consent for the development comprised in the application on terms that, in the opinion of the Secretary of State, are not materially different from those comprised in the application.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 114, 115 and 120 of the 2008 Act, makes the following Order—

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(1) [2008 c.29](#). Section 37 was amended by section 137(5) of, and Schedule 13 to, the Localism Act 2011 ([c.20](#)).  
(2) [S.I. 2010/103](#), amended by [S.I.2012/635](#).  
(3) Section 83 was amended by the Localism Act 2011 ([c.20](#)) section 128(2) and 237, Schedule 13 paragraphs 1, 35 (1) to (4) and Schedule 25, Part 20.  
(4) [S.I. 2017/572](#).

## PART 1

### PRELIMINARY

#### Citation and commencement

1. This Order may be cited as the Immingham Open Cycle Gas Turbine Order 2020 and comes into force on 1st September 2020.

#### Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961<sup>(5)</sup>;

“the 1965 Act” means the Compulsory Purchase Act 1965<sup>(6)</sup>;

“the 1980 Act” means the Highways Act 1980<sup>(7)</sup>;

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981<sup>(8)</sup>;

“the 1984 Act” means the Road Traffic Regulation Act 1984<sup>(9)</sup>;

“the 1990 Act” means the Town and Country Planning Act 1990<sup>(10)</sup>;

“the 1991 Act” means the New Roads and Street Works Act 1991<sup>(11)</sup>;

“the 2008 Act” means the Planning Act 2008<sup>(12)</sup>;

“access and rights of way plans” means the plans which are certified as the access and rights of way plans by the Secretary of State under article 39 (certification of plans etc.) for the purposes of this Order;

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

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act and 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;

“Anglian Water” means Anglian Water Services Limited (company number 2366656) whose registered address is Lancaster House Lancaster Way, Ermine Business Park, Huntingdon, Cambridge, United Kingdom PE29 6XU;

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

“book of reference” means the document of that description set out in Schedule 11 (documents to be certified) certified by the Secretary of State as the book of reference under article 39 for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

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(5) 1961 c.33.  
(6) 1965 c.56.  
(7) 1980 c.66.  
(8) 1981 c.66.  
(9) 1984 c.27.  
(10) 1990 c.8.  
(11) 1991 c.22.  
(12) 2008 c.29.

“commence” means to carry out any material operation, as defined in section 155 (when development begins) of the 2008 Act, comprised in or carried out for the purposes of the authorised development and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly;

“commissioning” means the process of testing all systems and components of the authorised development (which are installed or in relation to which installation is nearly complete) in order to ensure that they, and the authorised development as a whole, function in accordance with the plant design specifications and the undertaker’s operational and safety requirements;

“commitments register” means the plans which are certified as the access and rights of way plans by the Secretary of State under article 39 (certification of plans etc.) for the purposes of this Order;

“date of completion of construction” means the date on which the construction of the authorised development is complete including rectification of any construction defects, landscaping and reinstatement works;

“date of final commissioning” means the date on which the authorised development commences operation by generating power on a commercial basis, but excluding the generation of power during commissioning;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means provided it is in electronic form;

“emergency” means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that, in the reasonable opinion of the undertaker, would outweigh the adverse effects to the public (whether individuals, classes or generally as the case may be) of taking that action;

“the environmental statement” means the statement certified as the environmental statement by the Secretary of State under article 39 (certification of plans etc.) for the purposes of this Order;

“flood risk assessment” means the document certified as the flood risk assessment by the Secretary of State under article 39 (certification of plans etc.) for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“framework biodiversity enhancement and management plan” means the plan which is certified as the framework biodiversity enhancement and management plan by the Secretary of State under article 39 (certification of plans etc.) for the purposes of this order;

“framework construction environmental management plan” means the plan which is certified as the framework construction environmental management plan by the Secretary of State under article 39 (certification of plans etc.) for the purposes of this Order;

“framework construction traffic management plan” means the plan which is certified as the framework construction traffic management plan by the Secretary of State under article 39 (certification of plans etc.) for the purposes of this Order;

“framework construction worker travel plan” means the plan which is certified as the framework construction worker travel plan by the Secretary of State under article 39 (certification of plans etc.) for the purposes of this Order;

“framework written scheme of investigation” means the documents which are certified as the framework written scheme of investigation documents by the Secretary of State under article 39 (certification of plans etc.) for the purposes of this Order;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“indicative lighting strategy” means the documents which are certified as the indicative lighting strategy documents by the Secretary of State under article 39 (certification of plans etc.) for the purposes of this Order;

“land plans” means the plans which are certified as the land plans by the Secretary of State under article 39 (certification of plans etc.) for the purposes of this Order;

“limits of deviation” means in respect of numbered works 1, 2, 3, 4, 5 and 6 the outer limits of the corresponding numbered area shown on the works plan;

“maintain” includes, inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not the whole of, the authorised development provided that such activities are not likely to give rise to any significant adverse effects that have not been assessed in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“National Grid” means National Grid Electricity Transmission plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London, WE2N 5EH and/or National Grid Gas plc (Company Registration Number 02006000) whose registered office is at 1 to 3 Strand, London WC2N 5EH as the context requires;

“Network Rail” means Network Rail Infrastructure Limited (Company Registration Number 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN;

“Order land” means the land which is required for, or is required to facilitate, or is incidental to, or is affected by, the authorised development shown coloured pink, blue and yellow on the land plans and described in the book of reference;

“Order limits” means the Order limits shown on the works plans;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(13);

“relevant planning authority” means the local planning authority for the land in question, being North Lincolnshire Council, or any successor to it as planning authority;

“requirements” means those matters set out in Schedule 2 (requirements) to this Order;

“statutory undertaker” means any person falling within section 127(8) (statutory undertakers’ land) of the 2008 Act;

“statement to inform appropriate assessment” means statement to inform appropriate assessment which are certified as by the Secretary of State under article 39 (certification of plans etc.) for the purposes of this Order;

“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 “street” includes any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

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

“tribunal” means the Lands Chamber of the Upper Tribunal;

“undertaker” means VPI Immingham B Limited or the person who for the time being has the benefit of this Order in accordance with articles 6 (benefit of this Order) and 7 (consent to transfer benefit of the Order);

“VPI Immingham B Limited” means VPI Immingham B Limited (Company number 10630563) whose registered office is at 4th Floor, Nova South, 160 Victoria Street, London, England, SW1E 5LB;

“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; and

“works plans” means the plans of that description set out in Schedule 11.

(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 to any trusts or incidents (including restrictive covenants) to which the land is subject and references in this Order to the creation or acquisition of new rights include the imposition of restrictive covenants which interfere with interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order.

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

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

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

(6) The expression “includes” is to be construed without limitation.

(7) References in this Order to plots are references to the plots shown on the land plans and described in the book of reference.

## PART 2

### PRINCIPAL POWERS

#### **Development consent etc. granted by this Order**

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

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

#### **Maintenance of authorised development**

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

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

#### **Operation of authorised development**

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

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

### **Benefit of this Order**

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

### **Consent to transfer benefit of this Order**

7.—(1) Subject to paragraph (4), the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or
- (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 (including any of the numbered works) and such related statutory rights as may be so agreed.

(2) Where a transfer or grant has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) 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.

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

- (a) the transferee or lessee is—
  - (i) the holder of a licence under section 6 (licences authorising supply, etc.) of the Electricity Act 1989(14) or section 7 (licensing of public gas transporters) of the Gas Act 1986(15); or
  - (ii) in relation to a transfer or a lease of any works within a highway, a highway authority responsible for the highways within the Order land; or
- (b) the time limits for all 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 claims that have been made have all been compromised or withdrawn;
  - (iii) compensation has been paid in final settlement of all such claims;
  - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
  - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(5) Where the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the Secretary of State and National Grid in writing before transferring or granting a benefit referred to in paragraph (1).

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

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

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(14) 1989 c.29. Section 6 was amended by section 30 of the Utilities Act 2000 (c.27), and by section 89(3) of the Energy Act 2004 (c.20). There are other amendments to this section that are not relevant to this Order.

(15) 1986 c.44. Section 7 was amended by section 5 of the Gas Act 1995 (c.45) and section 76(2) of the Utilities Act 2000 (c.27). There are other amendments to the section that are not relevant to this Order.

- (b) subject to paragraph (9), the date on which the transfer is expected to take effect;
  - (c) the powers to be transferred or granted;
  - (d) pursuant to paragraph (3), the restrictions, liabilities and obligations that are to apply to the person exercising the powers transferred or granted; and
  - (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.
- (7) The undertaker must notify National Grid on seeking the consent of the Secretary of State referred to in paragraph (4).
- (8) The notification referred to in paragraph (7) must comply with the requirements in paragraph (6).
- (9) The date specified under paragraph (6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.
- (10) The notice given under paragraph (6) must be signed by the undertaker and the person to whom the benefit of the powers are to be transferred or granted as specified in that notice.

## PART 3

### STREETS

#### **Power to alter layout etc. of streets**

8.—(1) The undertaker may for the purposes of the authorised development alter the layout of, or carry out any works in, the street in the manner specified in relation to that street in column (3) of Schedule 3 (streets subject to street works).

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraph (3), the undertaker may, for the purposes of constructing, operating and maintaining the authorised development alter the layout of any street 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, footway, cycle track or verge; and
- (b) make and maintain passing places.

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

(4) Paragraph (3) does not apply where the undertaker is the street authority for a street in which the works are being carried out.

#### **Street works**

9.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) 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 or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d).

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

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

### **Construction and maintenance of new or altered means of access**

**10.**—(1) Those parts of each means of access specified in Part 1 of Schedule 4 (access) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed by the highway authority, must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the highway authority.

(2) Those parts of each means of access specified in Part 2 of Schedule 4 (access) to be constructed under this Order and which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from 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.

### **Temporary prohibition or restriction of use of streets**

**11.**—(1) The undertaker may, during and for the purposes of carrying out the authorised development, temporarily alter, divert, prohibit the use of or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.



(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street where the use has been prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

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

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily alter, divert, prohibit the use of or restrict the use of the street specified in column (2) of Schedule 5 (temporary prohibition or restriction of the use of streets) to the extent specified in column (3) of that Schedule.

(5) The undertaker must not temporarily alter, divert, prohibit the use of or restrict the use of—

- (a) the street specified in paragraph (4) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

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

#### **Access to works**

12. The undertaker may, for the purposes of the authorised development—

- (a) form and lay out the means of access, or improve existing means of access, in the locations specified in Schedule 3 (streets subject to street works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve the existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

#### **Agreements with street authorities**

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

- (a) construction of any new street including any structure carrying the street;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under the authorised development;
- (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order;
- (e) the execution in the street of any of the authorised development;
- (f) the adoption by a street authority which is the highway authority of works—
  - (i) undertaken on a street which is existing publicly maintainable highway; or
  - (ii) which the undertaker and highway authority agree are to be adopted as publicly maintainable highway; and
- (g) any such works as the parties may agree.

(2) Such an 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) include an agreement between the undertaker and street authority specifying 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**

**14.**—(1) Subject to paragraphs (3) and (4) and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction of the authorised development, at any time prior to the date that is 12 months after the date of final commissioning—

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road; and
- (b) make provision as to the direction or priority of vehicular traffic on any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker must not exercise the powers under paragraph (1) of this article unless it has—

- (a) given not less than four weeks' notice in writing of its intention so to do to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within seven days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under article 11 (temporary prohibition or restriction of use of streets) or paragraph (1) of this article has effect as if duly made by, as the case may be—

- (a) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
- (b) the local authority in whose area the road is situated as an order under section 32 (power of local authorities to provide parking places)(16) of the 1984 Act,

and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(17).

(4) In this article—

- (a) subject to sub-paragraph (b), expressions used in it and in the 1984 Act have the same meaning; and
- (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

## **PART 4**

### **SUPPLEMENTAL POWERS**

#### **Discharge of water**

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

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(16) Relevant amendments to section 32 were made by the 1991 Act section 168(1), Schedule 8, paragraph 39.

(17) 2004 c.18.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) must be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(18).

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

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

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

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

(6) This article does not authorise any water discharge activities or groundwater activities for which an environmental permit would be required pursuant to regulation 12(1) (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(19).

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 (interpretation) of the Harbours Act 1964(20), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other terms and expressions, with the exception of the term “watercourse”, used both in this article and in the Water Resources Act 1991(21) have the same meaning as in that Act.

### **Authority to survey and investigate the land**

**16.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or on any land 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—

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(18) 1991 c.56. Section 106 was amended by sections 35(8)(a) and 43(2) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c.43) and sections 36(2) and 99(2), (4), and (5) of the Water Act 2003 (c.37).

(19) S.I. 2016/1154.

(20) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by paragraph 9 of Schedule 3 of the Transport and Works Act 1992 (c.42).

(21) 1991 c.57.

- (a) must, if so required on entering the land, produce written evidence of their authority to do so; and
  - (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes are to be made under this article—
- (a) in land located within the highway boundary without the consent of the highway authority; or
  - (b) in a private street without the consent of the street authority.
- (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) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

### **Removal of human remains**

**17.—**(1) Before the undertaker carries out any part of the authorised development or works which will or may disturb any human remains in the Order land it must remove those human remains from the Order land, or cause them to be removed, in accordance with the following provisions of this article.

(2) Before any such remains are removed from the Order land the undertaker must give notice of the intended removal, describing the Order land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project; and
- (b) displaying a notice in a conspicuous place on or near to the Order land.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium and that person must, as soon as reasonably practicable after such re-interment or cremation,

provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10) and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner

by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(8) If—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order land; or
- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice, but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the Order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9), the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (3).

(11) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 (offence of removal of body from burial ground) of the Burial Act 1857(22) is not to apply to a removal carried out in accordance with this article.

## PART 5

### POWERS OF ACQUISITION

#### Compulsory acquisition of land

**18.**—(1) The undertaker may 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.

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(22) 1857 c.81. Substituted by Church of England (Miscellaneous Provisions) Measure 2014 No. 1 s.2 (January 1, 2015: substitution has effect subject to transitional and saving provisions specified in SI 2014/2077 Sch.1 paras 1 and 2).

(2) This article is subject to article 21 (compulsory acquisition of rights etc.) and article 27 (temporary use of land for carrying out the authorised development).

### **Power to override easements and other rights**

19.—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised 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 use of land arising by virtue of contract.

(2) The undertaker must 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 use of land arising by virtue of contract,

caused by the carrying out or use of the authorised development and the operation of section 158 (benefit of order granting development consent) 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 include restrictions as to the use of land arising by 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 of the 1965 Act must be applied to the construction of paragraph (2) (with any necessary modifications).

### **Time limit for exercise of authority to acquire land compulsorily**

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act( as applied by article 23 (application of the 1981 Act).

(2) The authority conferred by article 27 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Compulsory acquisition of rights etc.**

21.—(1) Subject to paragraph (2), the undertaker may acquire such rights over the Order land or impose such restrictive covenants affecting the Order land as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) In respect of such parts of the Order land that are shown edged red and shaded blue on the land plans, the undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new class of rights and impose the restrictions as described in Table 6 of Schedule 6 (land in which only new rights etc. may be acquired).

(3) Subject to section 8 (provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 7 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants ), where the undertaker creates or acquires a right over land or imposes

a restrictive covenant under paragraph (1) or (2), the undertaker is not to be required to acquire a greater interest in that land.

(4) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants ) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant .

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

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

(7) Subject to the modifications set out in Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants) the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right or imposition of a restriction as they apply to the compulsory purchase of land and interests in land.

### **Private rights**

**22.**—(1) Subject to the provisions of this article, all private rights and restrictions over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictions over land subject to the compulsory acquisition of rights or imposition of restrictions under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of acquisition of the right 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 in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights over any part of the Order land that is owned by, vested in or acquired by the undertaker are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights and where the undertaker gives notice of such extinguishment.

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

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

(6) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 29 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the creation and acquisition of rights or the imposition of restrictions over land;

(ii) the undertaker’s appropriation of it;

(iii) the undertaker’s entry onto it; or

(iv) the undertaker’s taking temporary possession of it,

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

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

(8) If any such agreement as is referred to in paragraph (7)(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,

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

(9) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, restrictions 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**

23.—(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 there is substituted—

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

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

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

(6) In section 5B(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 20 (time limit for exercise of authority to acquire land compulsorily) of the Immingham Open Cycle Gas Turbine Order 2020”.

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



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

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 24(3) (acquisition of subsoil only) of the Immingham Open Cycle Gas Turbine Order 2020, which excludes the acquisition of subsoil only from this Schedule.”

(10) References to the 1965 Act in the 1981 Act must be construed as references to that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 25 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

### **Acquisition of subsoil only**

**24.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 18 (compulsory acquisition of land) and paragraphs (1) and (2) of article 21 (compulsory acquisition of rights etc.) as may be required for any purpose for which that land or rights or restrictions over that land may be created and acquired or imposed under that provision instead of acquiring the whole of the land.

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

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

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (reference of objection to Upper Tribunal: general) of the 1990 Act.

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

### **Modification of Part 1 of the 1965 Act**

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

(2) In section 4A(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in 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 20 (time limit for exercise of authority to acquire land compulsorily) of the Immingham Open Cycle Gas Turbine Order 2020”.

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

- (a) in subsection (1)(a), after “land” insert “under that provision”; and
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 20 (time limit for exercise of authority to acquire land compulsorily) of the Immingham Open Cycle Gas Turbine Order 2020”.

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

- (a) for paragraphs 1(2) and 14(2) substitute—  
 “(2) But see article 24(3)(acquisition of subsoil only) of the Immingham Open Cycle Gas Turbine Order 2020, which excludes the acquisition of subsoil only from this Schedule”; and
- (b) after paragraph 29, insert—

## “PART 4 INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 27 (temporary use of land for carrying out the authorised development) or article 28 (temporary use of land for maintaining the authorised development) of the Immingham Open Cycle Gas Turbine Order 2020.”.

### **Rights under or over streets**

**26.**—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or airspace over, any street within the Order land as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

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

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

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

(4) Subject to paragraph (5) any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

### **Temporary use of land for carrying out the authorised development**

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

- (a) enter on and take possession of—
- (i) so much of the land specified in column (1) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule;
- (ii) any other part of the Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings, fences, debris and vegetation from that land;

- (c) construct temporary works (including the provision of means of access) and buildings on that land;
- (d) construct any works specified in relation to that land in column (2) of Schedule 8; and
- (e) carry out or construct any other mitigation works.

(2) Before taking temporary possession of land for a period of time by virtue of sub-paragraph (1) the undertaker must give a notice of intended entry to each of the owners and occupiers of the land, so far as known to the undertaker after making diligent inquiry.

(3) The notice in paragraph (2) must specify—

- (a) the period after the end of which the undertaker may take temporary possession of the land provided that such period must not end earlier than the end of the period of three months beginning with the day on which the notice is given;
- (b) subject to paragraph (4) the period for which the undertaker is to take temporary possession of the land,

provided that such periods may be varied from time to time by agreement between the undertaker and the owner or occupier.

(4) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of final commissioning of the authorised development; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession.

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

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

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

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

(9) The undertaker must not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).

(10) Nothing in this article precludes the undertaker from—

- (a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in article 21 (compulsory acquisition of rights etc.); or

- (b) acquiring any right in the subsoil of any part of the Order land identified in part 1 of the book of reference under article 24 (acquisition of subsoil only) or article 26 (rights under or over streets).

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

(12) 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.

(13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 8.

(14) The provisions of the Neighbourhood Planning Act 2017(23) do not apply insofar as they relate to temporary possession of land under this article in connection with the carrying out of the authorised development and other development or works necessary for the authorised development within the Order land.

### **Temporary use of land for maintaining the authorised development**

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

- (a) enter on and take temporary possession of any of the Order land if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any of 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) Before taking temporary possession of land for a period of time by virtue of paragraph (1) the undertaker must give notice of intended entry to each of the owners and occupiers of the land, so far as known to the undertaker after making diligent inquiry.

(4) The notice in paragraph (3) must specify—

- (a) the period after the end of which the undertaker may take temporary possession of the land provided that such period must not end earlier than the end of the period of three months beginning with the day on which the notice is given; and
- (b) subject to sub-paragraph (5) the period for which the undertaker is to take temporary possession of the land,

provided that such periods may be varied from time to time by agreement between the undertaker and the owner or occupier.

(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, is to 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 152 of the 2008 Act (further provisions as to compensation for injurious affection) 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 one year beginning with the date of final commissioning.

(13) The provisions of the Neighbourhood Planning Act 2017(24) do not apply insofar as they relate to temporary possession of land under this article in connection with the maintenance of the authorised development and other development necessary for the authorised development within the Order land.

### **Statutory undertakers**

- 29.** Subject to the provisions of Schedule 9 (protective provisions), the undertaker may—
- (a) acquire compulsorily the land belonging to statutory undertakers within the Order land;
  - (b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under, over or within the Order land; and
  - (c) create and acquire compulsorily rights or impose restrictions over any Order land belonging to statutory undertakers.

### **Apparatus and rights of statutory undertakers in streets**

**30.** Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 8 (power to alter layout etc. of streets), article 9 (street works), article 10 (construction and maintenance of new or altered means of access) or article 11 (temporary prohibition or restriction of use of streets) any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 9 (protective provisions), as if this Order had not been made.

### Recovery of costs of new connections

**31.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (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 29 any person who is—

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

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

(3) This article does not have effect in relation to apparatus to which article 30 (apparatus and rights of statutory undertakers in streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

“public communication provider” has the same meaning as in section 151(1) (interpretation of chapter 1) of the Communications Act 2003(25); and

“public utility undertaker” has the same meaning as in the 1980 Act.

## PART 6

### OPERATION

#### Felling or lopping of trees

**32.**—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order land 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 or operation 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, is to be determined under Part of the 1961 Act.

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(25) 2003 c.21. Section 151(1) was amended by paragraphs 90(a)(i), (ii), (iii), 90(b), 90(c) and 90(d) of Schedule 1 to the Electronic Communications and Wireless Telegraphy Regulations S.I. 2011/1210.

### Protective works to buildings

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

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the date of final commissioning.

(3) Subject to paragraph (5), for the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

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

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

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

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

(6) Where a notice is served under paragraph (5) (a),(c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of ten days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 42 (arbitration).

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

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within a period of five years beginning with the date of final commissioning it appears that the protective works are inadequate to protect the building against damage caused by construction, operation or maintenance of that part of the authorised development,

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

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

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

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, operation and maintenance or use of the authorised development;
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, operation and maintenance or use of the authorised development; and
- (c) any works the purpose of which is to secure the safe operation of the authorised development or to prevent or minimise the risk of such operation being disrupted.

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

## PART 7

### MISCELLANEOUS AND GENERAL

#### **Application of landlord and tenant law**

34.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

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

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

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

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

#### **Operational land for purposes of the 1990 Act**

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



### **Defence to proceedings in respect of statutory nuisance**

**36.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990(26) in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(27); or

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

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

(2) Section 61(9) of the Control of Pollution Act 1974 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 or maintenance of the authorised development.

### **Protective provisions**

**37.** Schedule 9 (protective provisions) has effect.

### **Procedure in relation to certain approvals**

**38.**—(1) Where an application is made to, or a request is made of, the relevant planning authority, highway authority, traffic authority, street authority, or the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 9 (protective provisions) for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval to be validly given, must be given in writing.

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

(3) Schedule 10 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the requirements.

(4) Save for applications made pursuant to Schedule 10 and where stated to the contrary if, within eight weeks (or such longer period as may be agreed with the undertaker in writing) after the application or request has been submitted to an authority, beneficiary of protective provisions or an owner as referred to in paragraph (1) of this article it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

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(26) 1990 c.43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16); Section 79 was amended by sections 101 and 102 of the same Act.

(27) 1974 c.40. Section 60 was amended by section 7(3)(a)(4)(g) of the Public Health (Control of Disease) Act 1984 (c.22) and section 112(1)(3), paragraphs 33 and 35(1) of Schedule 17, and paragraph 1(1)(xxvii) of Schedule 16 to the Electricity Act 1989 (c.29); Section 61 was amended by section 133(2) and Schedule 7 to the Building Act 1984 (c.55), paragraph 1 of Schedule 24 to the Environment Act 1995 (c.25), and section 162(1) of and paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c.43).

(5) The procedure set out in paragraph 1(3) of Schedule 10 has effect in relation to any refusal by an authority, beneficiary of protective provisions, or an owner as referred to in paragraph (1) of this article to any consent, agreement or approval required under this Order, including such as may be required pursuant to the protective provisions contained within Schedule 9 (protective provisions).

(6) Where any application is made as described in paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by paragraph (4).

### **Certification of plans etc.**

**39.**—(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 Table 8 of Schedule 11 (documents and plans to be certified) to this Order for certification that they are true copies of the documents referred to in this Order.

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

### **Service of notices**

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

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

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978<sup>(28)</sup> 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 that body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at that time of service.

(4) Where for the 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 the description of “owner”, or as the case may be, “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

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

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<sup>(28)</sup> 1978 c.30. Section 7 was amended by section 144 and paragraph 19 of Schedule 10 to the Road Traffic Regulation Act 1984 (c.27). There are other amendments not relevant to this Order.

- (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) in a form sufficiently permanent to be used for subsequent reference.

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

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

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

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

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

(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 notice or document in printed form.

### **Amendment and modification of statutory provisions**

**41.** The Able Marine Energy Park Development Consent Order 2014 is amended for the purposes of this Order only as set out in Schedule 13 (modifications to the Able Marine Energy Park Development Consent Order 2014).

### **Arbitration**

**42.** Any difference under any provision of this Order, unless otherwise provided for, is to 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) by the Secretary of State.

### **Funding**

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

- (a) a guarantee (and the amount of that guarantee) in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security (and the amount of that security) 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 18 (compulsory acquisition of land);

- (b) article 21 (compulsory acquisition of rights etc.);
- (c) article 22 (private rights);
- (d) article 24 (acquisition of subsoil only);
- (e) article 26 (rights under or over streets);
- (f) article 27 (temporary use of land for carrying out the authorised development);
- (g) article 28 (temporary use of land for maintaining the authorised development); and
- (h) article 29 (statutory undertakers).

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

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

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

*Gareth Leigh*  
Head of Energy Infrastructure Planning  
Department for Business, Energy and Industrial  
Strategy

7th August 2020

## SCHEDULES

### SCHEDULE 1

Article 3

#### AUTHORISED DEVELOPMENT

In North Lincolnshire—

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 that Act, consisting of a generating station with a gross rated electrical output of up to 299MWe—

**Work No. 1** – OCGT power station, being an open cycle gas turbine generating station with a gross capacity of up to 299 megawatts, comprising—

- (a) gas turbine and turbine hall buildings;
- (b) electrical generator;
- (c) stack;
- (d) auxiliary cooling equipment or system;
- (e) gas turbine air intake filters;
- (f) banks of finfan coolers;
- (g) nitrogen oxide emissions control equipment;
- (h) transformers;
- (i) a switchyard, associated switch gear and ancillary equipment;
- (j) a gas receiving area, gas control facilities and gas reception building;
- (k) lubricating oil, hydraulic oil and chemical storage tanks and equipment;
- (l) continuous emissions monitoring system;
- (m) raw water and fire water storage tanks;
- (n) water treatment facilities, demineralised water treatment works, including storage tanks;
- (o) oily water and waste water treatment plant building and basin;
- (p) fire fighting equipment, buildings and distribution pipework;
- (q) permanent plant laydown area;
- (r) auxiliary plant, buildings, enclosures and structures;
- (s) mechanical, electrical, gas, telecommunications and water networks, pipework, cables, racks, infrastructure, instrumentation and utilities, including connections between parts of this Work No. 1 and Work Nos 4, 5 and 6;
- (t) workshop buildings and stores;
- (u) electrical, control, administration and welfare buildings; and
- (v) storm water attenuation system.

**Work No. 2** – access, comprising access from Rosper Road to each of Work Numbers 1, 3, 4, 5 and 6.

**Work No. 3** – temporary construction and laydown comprising hard standing, laydown and open storage areas, contractor compounds and staff welfare facilities, vehicle parking, roadways and haul routes, security fencing and gates, gatehouses, external lighting and lighting columns.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

**Work No. 4** – gas connection, being works for the transport of natural gas to Work No. 1, comprising—

- (a) an underground and overground gas pipeline up to 600 millimetres (nominal internal diameter);
- (b) cathodic protection system and posts;
- (c) marker posts; and
- (d) control systems and cables.

**Work No. 5** – overground electrical connection up to 400 kilovolts and controls systems.

**Work No 6** – utilities and services connections comprising—

- (a) water pipes, connections, structures and ancillary equipment;
- (b) telecommunications cables and equipment;
- (c) compressed air connections and ancillary equipment;
- (d) electrical cables, connections and ancillary equipment;
- (e) control systems and cables; and
- (f) closed circuit television and security system connections.

In connection with and in addition to Work Nos. 1 to 6, further development including—

- (a) buildings and structures;
- (b) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;
- (c) electrical, gas, water, foul drainage and telecommunications infrastructure, connections and works, and works to install, remove, alter and connect into such services;
- (d) hard standing and hard landscaping, soft landscaping, embankments, planting and biodiversity enhancement measures;
- (e) security fencing, gates, boundary treatment and other means of enclosure;
- (f) lighting, including lighting columns;
- (g) gatehouses and weighbridges;
- (h) closed circuit television cameras, columns and other security works;
- (i) site establishment and preparation works, including site clearance, demolition, earthworks, excavations, vehicular access points, the alteration and protection of services and utilities, and works for the protection of buildings and land;
- (j) temporary construction laydown areas, contractor facilities, materials and plant storage, generators, concrete batching facilities, vehicle and cycle parking, roadways and haul routes, offices and welfare facilities, wheel wash facilities, and signage;
- (k) vehicle parking and cycle storage;
- (l) accesses, roads, pedestrian and cycle routes; and
- (m) tunnelling, boring and drilling works,

and to the extent that it does not form part of such works, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the works assessed in the environmental statement.

## SCHEDULE 2

Article 3

### REQUIREMENTS

#### Interpretation

1. In this Schedule—

“Environment Agency” means the non-departmental public body of that name created by section 1 (the Environment Agency) of the Environment Act 1995(29);

“Highways England” means Highways England Company Limited or such other person who is appointed as the strategic highways company in respect of the A160 Humber Road and the A160/A180 interchange pursuant to section 1 (appointment of strategic highways companies) of the Infrastructure Act 2015(30);

“Historic England” means the Historic Buildings and Monuments Commission for England established by section 32 (establishment of commission) of the National Heritage Act 1983(31);

“lead local flood authority” means the body designated as such, for the area in which the authorised development is located, pursuant to section 6(7) (other definitions) of the Flood and Water Management Act 2010(32);

“Lincolnshire Wildlife Trust” means Lincolnshire Wildlife Trust (registered charity number 218895) of Banovallum House, Lincolnshire, LN9 5HF;

“North East Lindsey Internal Drainage Board” means the internal drainage board for the area in which the authorised development is located pursuant to section 1 (internal drainage districts and boards) of the Land Drainage Act 1991(33);

“North Lincolnshire Police” means the police force for the area in which the authorised development is located pursuant to section 1 (police areas) of the Police Act 1996(34);

“part of the authorised development” means any part of Works Nos. 1 to 6; and

“permitted preliminary works” means operations consisting of environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, archaeological investigations, receipt and erection of construction plant and equipment, erection of any temporary means of enclosure, the temporary display of site notices or advertisements.

#### Commencement of the authorised development

2.—(1) The authorised development must not be commenced after the expiration of five years from the date this Order comes into force.

(2) The authorised development must not commence unless the undertaker has given the relevant planning authority fourteen days’ notice of its intention to commence the authorised development.

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(29) 1995 c.25.

(30) 2015 c.7.

(31) 1983 c.47.

(32) 2010 c.29.

(33) 1991 c.59 as amended by the Water Act 2014 (c.21).

(34) 1996 c.16 as amended by the Local Government and Public Involvement in Health Act 2007 (c.28) and the Policing and Crime Act 2017 (c.3).

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### **Notice of commencement**

3. Notice of the intended start of commissioning of the authorised development must be given to the relevant planning authority where practicable prior to such start and in any event within seven days from the date that commissioning is started.

### **Notice of date of final commissioning**

4. Notice of the intended date of final commissioning of the authorised development must be given to the relevant planning authority where practicable prior to such date of final commissioning and in any event within seven days from the date of final commissioning.

### **Detailed design**

5.—(1) In relation to any part of the authorised development comprised in Work No. 1 no development of that part may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, in respect of sub-paragraph (d) after consultation with the highway authority, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) hard standings;
- (d) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes; and
- (e) landscaping

(2) The details submitted pursuant to sub-paragraph (1) must be in accordance with the parameters set out in Schedule 12.

(3) No part of the authorised development comprised in Work No. 2 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority—

- (a) construction access;
- (b) operational access;
- (c) vehicle parking; and
- (d) haul routes.

(4) No part of the authorised development comprised in Work No. 3 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, in respect of sub-paragraphs (a), (d) and (e) after consultation with the highway authority, approved by the relevant planning authority—

- (a) hard standings, laydown and open storage areas;
- (b) contractor compounds and construction staff welfare facilities;
- (c) gatehouse;
- (d) vehicle parking and cycle storage facilities; and
- (e) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes.

(5) No part of the authorised development comprised in Work Nos. 4 and 5, save for the permitted preliminary works, may commence until details of the following for that part have been submitted to and, after consultation with National Grid, approved by the relevant planning authority—



- (a) the route and method of installation of the gas pipeline; and
  - (b) the route and method of electrical connection works comprising overground electrical cables, and control systems and cables.
- (6) No part of the authorised development comprised in Work No. 6 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with the Environment Agency and Anglian Water, approved by the relevant planning authority—
- (a) the route and method of construction of any utilities and services connections including water pipes, connections, pumps, tanks, structures and ancillary equipment; telecommunications cables and equipment; electrical cables, connections and ancillary equipment; and control systems and cables; and
  - (b) water connection works, comprising underground and overground pipes, plant apparatus, enclosures and structures, and supply cables, transformers and control system cables.
- (7) Work Nos. 1, 2, 3, 4, 5 and 6 must be carried out in accordance with the approved details unless otherwise agreed with the relevant planning authority.

### **Biodiversity enhancement and management plan**

- 6.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a biodiversity protection plan for that part has been submitted to and, after consultation with Natural England, approved by the relevant planning authority.
- (2) The plan submitted and approved pursuant to sub-paragraph (1) must include details of—
- (a) measures to protect existing shrub and tree planting that is to be retained; and
  - (b) biodiversity and habitat impact avoidance.
- (3) The plan submitted and approved pursuant to sub-paragraph (1) must be implemented as approved throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.
- (4) Prior to the date of final commissioning a biodiversity enhancement and management plan must be submitted to and approved by the relevant planning authority.
- (5) The plan submitted and approved pursuant to sub-paragraph (4) must include details of—
- (a) measures to protect existing shrub and tree planting that is to be retained;
  - (b) measures to enhance biodiversity and habitats;
  - (c) an implementation timetable; and
  - (d) biodiversity management and maintenance.
- (6) Any shrub or tree planted as part of the approved plan that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted unless otherwise agreed with the relevant planning authority.
- (7) The plan submitted and approved pursuant to sub-paragraph (4) must be in accordance with the principles of the framework biodiversity enhancement and management plan.
- (8) The plan must be implemented as approved during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

## **External lighting**

7.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for all external lighting to be installed during construction for that part has been submitted to and approved by the relevant planning authority.

(2) No part of the authorised development may be commissioned until a scheme for all permanent external lighting to be installed has been submitted to and approved by the relevant planning authority.

(3) The schemes submitted and approved pursuant to sub-paragraphs (1) and (2) of this requirement must be in accordance with the indicative lighting strategy and include measures to minimise and otherwise mitigate any artificial light emissions during the construction and operation of the authorised development.

(4) The schemes must be implemented as approved unless otherwise agreed with the relevant planning authority.

## **Highway accesses**

8.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the siting, design and layout (including visibility splays and construction specification) of any new or modified means of access between any part of the Order limits and the public highway to be used by vehicular traffic during construction, and the means of reinstating any such means of access after construction has, for that part, been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The highway accesses approved pursuant to sub-paragraph (1) must be constructed in accordance with the approved details prior to the start of construction of the relevant part of the authorised development (other than the accesses), and where temporary, reinstated prior to the date of final commissioning, unless otherwise agreed with the relevant planning authority.

(3) Prior to the date of final commissioning details of the siting, design and layout (including visibility splays and construction specification) of any new or modified permanent means of access to a highway to be used by vehicular traffic, must be submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(4) The highway accesses approved pursuant to sub-paragraph (3) must be constructed in accordance with the details approved unless otherwise agreed with the relevant planning authority.

## **Means of enclosure**

9.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a programme for the removal of all temporary means of enclosure for any construction areas or sites associated with the authorised development has, for that part, been submitted to and approved by the relevant planning authority.

(2) Any construction areas or sites associated with the authorised development must remain securely fenced at all times during construction and commissioning of the authorised development.

(3) Any temporary fencing must be removed by the end of three months beginning with the date of completion of construction of the authorised development (or such other period as the relevant planning authority may approve).

(4) Prior to the date of final commissioning details of any proposed permanent means of enclosure must be submitted to and approved by the relevant planning authority.

(5) Any permanent means of enclosure approved pursuant to sub-paragraph (4) must be completed prior to the date of final commissioning.

(6) The authorised development must be carried out in accordance with the approved details unless otherwise agreed with the relevant planning authority.

(7) In this requirement, “means of enclosure” means fencing, walls or other means of boundary treatment and enclosure.

### **Surface water drainage**

**10.**—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the temporary surface water drainage systems, including means of pollution control in accordance with the construction environmental management plan submitted pursuant to requirement 14 and a management and maintenance plan to ensure that the systems remain fully operational throughout the construction of the relevant part of the authorised development have, for that part, been submitted to, and after consultation with the lead local flood authority and North East Lindsey Internal Drainage Board, approved by the relevant planning authority.

(2) The scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) Details of the permanent surface water drainage systems, including a programme for their implementation, must be submitted to, and after consultation with the Environment Agency, the lead local flood authority, Anglian Water and North East Lindsey Internal Drainage Board, approved by the relevant planning authority prior to the start of construction of any part of those systems.

(4) The details submitted and approved pursuant to sub-paragraphs (1) and (3) of this requirement must be in accordance with the principles set out in chapter 12 (surface water, flood risk and drainage) of the environmental statement and the flood risk assessment.

(5) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

### **Flood risk mitigation**

**11.**—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for the mitigation of flood risk during construction, has, for that part, been submitted to and approved by the relevant planning authority.

(2) The scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) No part of the authorised development may commence until a scheme for the mitigation of flood risk during operation has, for that part, been submitted to and, after consultation with the Environment Agency and North East Lindsey Internal Drainage Board, approved by the relevant planning authority.

(4) The schemes submitted and approved pursuant to sub-paragraphs (1) and (3) of this requirement must be in accordance with the principles set out in chapter 12 (surface water, flood risk and drainage) of the environmental statement and the flood risk assessment.

(5) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(6) The authorised development must not be commissioned until the flood risk mitigation has been implemented and a flood emergency response and contingency plan has been submitted to,

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and after consultation with North East Lindsey Internal Drainage Board, approved by the relevant planning authority.

(7) The plan approved pursuant to sub-paragraph (6) must be implemented throughout the commissioning and operation of the authorised development unless otherwise agreed with the relevant planning authority.

### **Contaminated land and groundwater**

**12.**—(1) No part of the authorised development may commence, save for geotechnical surveys and other investigations for the purpose of assessing ground conditions, until a scheme to deal with the contamination of land, including groundwater, which is likely to cause significant harm to persons or pollution of controlled waters or the environment, has, for that part, been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with the principles set out in chapter 11 (ground conditions and hydrogeology) of the Environmental Statement and with the construction environmental management plan submitted pursuant to requirement 14.

(3) The scheme must include a risk assessment, supported by site investigation data, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a materials management plan, which sets out long-term measures with respect to any contaminants remaining on the site.

(4) The authorised development, including any remediation, must be carried out in accordance with the approved scheme unless otherwise agreed with the relevant planning authority.

(5) Should any remediation be required a verification report demonstrating the completion of works set out in the approved scheme and the effectiveness of the remediation must be submitted to, and approved, by the relevant planning authority prior to the date of final commissioning. The report must include results of sampling and monitoring carried out in accordance with the approved scheme to demonstrate that the site remediation criteria have been met.

### **Archaeology**

**13.**—(1) No part of the authorised development may commence until a written scheme of investigation for that part has been submitted to and, after consultation Historic England, approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with chapter 13 (cultural heritage) of the environmental statement and the framework written scheme of investigation.

(3) The scheme must identify whether any further archaeological investigations are required and, if investigations are deemed to be required, the nature and extent of the investigations in order to preserve by knowledge or in-situ any archaeological features that are identified.

(4) The scheme must provide details of the measures to be taken to protect, record or preserve any significant archaeological features that may be found.

(5) Any archaeological investigations implemented and measures taken to protect, record or preserve any identified significant archaeological features that may be found must be carried out—

(a) in accordance with the approved scheme; and

(b) by a suitably qualified person or organisation approved by the relevant planning authority unless otherwise agreed with the relevant planning authority.

### **Construction environmental management plan**

14.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction environmental management plan has been submitted to and, after consultation with Natural England, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the framework construction environmental management plan and incorporate—

- (a) a code of construction practice, specifying measures designed to minimise the impacts of construction works;
- (b) a scheme for the control of emissions of dust;
- (c) a soil management plan;
- (d) a sediment control plan;
- (e) a scheme for environmental monitoring and reporting during the construction of the authorised development, including measures for undertaking any corrective actions;
- (f) a scheme for the notification of any significant construction impacts on local residents and for handling any complaints received from local residents relating to such impacts during the construction of the authorised development; and
- (g) a requirement that the detail of the fencing and protection of asset A6 is in accordance with the strategy set out in the framework written scheme of investigation.

(3) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan unless otherwise agreed with the relevant planning authority.

(4) The plan submitted must include information on the proposed piling methods, their approximate duration and timing, the likely sound power levels, and any necessary management measures or mitigation to ensure, taking into account the information in the statement to inform appropriate assessment, that there will be no adverse impact on any qualifying species of the Humber Estuary Special Protection Area and Ramsar Site.

### **Protection of highway surfaces**

15.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details for undertaking condition surveys of the relevant parts of Rosper Road which are maintainable at the public expense and which are to be used during construction have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The condition surveys must be undertaken in accordance with the approved details and a schedule of repairs required due to use by construction traffic for the authorised development, including a programme for undertaking any such repairs and their inspection, must, following the completion of the post-construction condition surveys, be submitted to, and after consultation with the highway authority, approved by the relevant planning authority.

(3) The schedule of repairs must be carried out as approved unless otherwise agreed with the relevant planning authority.

### **Construction traffic management plan**

16.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction traffic management plan has been submitted to and, after consultation with North East Lincolnshire Council, Highways England and the highway authority, approved by the relevant planning authority.

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(2) The plan submitted and approved must be in accordance with chapter 7 (traffic and transport) of the environmental statement and the framework construction traffic management plan.

(3) The plan submitted and approved must include—

- (a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;
- (b) details of the routing strategy and procedures for the notification and conveyance of abnormal invisible loads, including agreed routes, the numbers of abnormal loads to be delivered by road and measures to mitigate traffic impact; the construction programme; and
- (c) any necessary measures for the temporary protection of carriageway surfaces, the protection of statutory undertakers' plant and equipment, and any temporary removal of street furniture.

(4) Notices must be erected and maintained throughout the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.

(5) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

### **Construction workers travel plan**

**17.—(1)** No part of the authorised development may commence, save for the permitted preliminary works, until a construction workers travel plan has been submitted to and, after consultation with North East Lincolnshire Council, Highways England and the highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with chapter 7 (traffic and transport) of the environmental statement and the framework construction worker travel plan.

(3) The plan submitted and approved must include—

- (a) measures to promote the use of sustainable transport to and from the authorised development by construction staff;
- (b) provision as to the responsibility for, and timescales of, the implementation of those measures;
- (c) details of parking for construction personnel within the construction sites; and
- (d) a monitoring and review regime.

(4) The approved plan must be implemented prior to commencement of the authorised development, save for the permitted preliminary works, and must be maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

### **Construction hours**

**18.—(1)** Construction work relating to the authorised development must not take place on bank holidays or otherwise outside the hours of—

- (a) 0700 to 1900 hours on Monday to Friday; and
- (b) 0800 to 1800 hours on a Saturday.

(2) Delivery or removal of materials, plant and machinery must not take place on bank holidays nor outside the hours of 0700 to 1900 hours on Monday to Saturday.

(3) The restrictions in sub-paragraphs (1) and (2) do not apply to construction work or the delivery or removal of materials, plant and machinery, where these—

- (a) do not exceed a noise limit measured at the Order limits which has been agreed with the relevant planning authority;
- (b) are carried out with the prior approval of the relevant planning authority; or
- (c) are associated with an emergency.

(4) The restrictions in sub-paragraph (2) do not apply to the delivery of abnormal indivisible loads, which are—

- (a) associated with an emergency; or
- (b) carried out with the prior approval of the relevant planning authority.

(5) Sub-paragraph (1) does not preclude—

- (a) a start-up period from 0630 to 0700 and a shut-down period from 1900 to 1930 Monday to Friday and a start-up period from 0730 to 0800 and a shut-down period from 1800 to 1830 on a Saturday; or
- (b) maintenance at any time of plant and machinery engaged in the construction of the authorised development.

(6) In this requirement—

“shut down period” means the period during which construction workers may return to the site office to return safety and other equipment, attend debrief sessions, change clothing and prepare to leave site; and

“start-up period” means the period during which construction workers may arrive at site, sign in, don personal protective equipment, attend safety and other briefings and mobilise on site.

### **Control of noise - operation**

**19.**—(1) Prior to the date of final commissioning a scheme for the management and monitoring of noise during operation of the authorised development must be submitted to and approved by the relevant planning authority.

(2) The scheme submitted pursuant to sub-paragraph (1) must include the results of daytime and night time baseline noise monitoring that has been carried out by the undertaker for the purposes of this requirement as agreed with the relevant planning authority.

(3) Noise (in terms of the BS4142:2014 rating level) from the operation of the authorised development must be no greater than 3dB higher than the defined representative background sound level during each of the daytime and the night time, adjacent to the nearest residential properties at locations agreed with the relevant planning authority.

(4) The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.

(5) In this requirement—

- (a) “daytime” means the period from 0700 to 2300 and “night time” means the period from 2300 to 0700; and
- (b) “defined representative background sound level” means the sound level measured during the monitoring secured by sub-paragraph (2).

### **Piling and penetrative foundation design**

**20.**—(1) No part of the authorised development comprised within Work No. 1 may commence, save for the permitted preliminary works, until a written piling and penetrative foundation design

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method statement, informed by a risk assessment, for that part, has been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) All piling and penetrative foundation works must be carried out in accordance with the approved method statement unless otherwise agreed with the relevant planning authority.

#### **Waste management on site - construction wastes**

**21.**—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction site waste management plan for that part has been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in the framework construction environmental management plan.

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

#### **Restoration of land used temporarily for construction**

**22.**—(1) Prior to the date of final commissioning a scheme for the restoration of any land within the Order limits which has been used temporarily for construction must be submitted to and approved by the relevant planning authority.

(2) The land must be restored within three years of the date of final commissioning (or such other period as the relevant planning authority may approve), in accordance with the restoration scheme approved in accordance with sub-paragraph (1).

#### **Employment, skills and training plan**

**23.**—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a plan detailing arrangements to promote employment, skills and training development opportunities for local residents during construction and employment opportunities during operation of the authorised development has been submitted to and, after consultation with North East Lincolnshire Council, approved by the relevant planning authority.

(2) The approved plan must be implemented and maintained during the construction and operation of the authorised development unless otherwise agreed with the relevant planning authority.

#### **Decommissioning**

**24.**—(1) Within 12 months of the date that the undertaker decides to decommission the authorised development, the undertaker must submit to the relevant planning authority for their approval a decommissioning environmental management plan.

(2) No decommissioning works may be carried out until the relevant planning authority has approved the plan.

(3) The plan submitted and approved must include details of—

- (a) the buildings to be demolished;
- (b) the means of removal of the materials resulting from the decommissioning works;
- (c) the phasing of the demolition and removal works;
- (d) any restoration works to restore the land to a condition agreed with the relevant planning authority;
- (e) the phasing of any restoration works; and



(f) a timetable for the implementation of the scheme.

(4) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

### **Foul water drainage**

**25.**—(1) No part of the authorised development may commence, save for the permitted preliminary works, until full details of a scheme, for the connection, conveyance, treatment and disposal of mains foul water drainage on and off site has been submitted to, and after consultation with the Environment Agency and Anglian Water, approved by the relevant planning authority.

(2) If it is demonstrated as part of the information submitted pursuant to sub-paragraph (1) that it is not practicable or reasonable to connect to a mains system, an alternative strategy for the provision and implementation of wastewater treatment must be submitted to and, after consultation with the Environment Agency and Anglian Water, approved by the relevant planning authority. Any non-mains drainage proposal must include a management and maintenance plan to ensure that it will not cause pollution to the water environment.

(3) The schemes approved pursuant to sub-paragraph (1) and (where relevant) sub-paragraph (2) must be implemented and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

### **Requirement for written approval**

**26.** Where under any of the above requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be provided in writing.

### **Approved details and amendments to them**

**27.**—(1) All details submitted for approval of the relevant planning authority under these requirements must be in accordance with the parameters of the environmental statement and reflect the principles set out in the documents certified under article 39 (certification of plans etc.).

(2) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details are to be taken to include any amendments that may subsequently be approved by the relevant planning authority.

### **Amendments agreed by the relevant planning authority**

**28.**—(1) Where the words “unless otherwise agreed with the relevant planning authority” appear in the above requirements, any such approval or agreement may only be given in relation to non-material amendments and where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval or agreement sought will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(2) In cases where the requirement or the relevant sub-paragraph requires consultation with specified persons, any approval or agreement must not be given without the relevant planning authority having first consulted with those persons.

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## SCHEDULE 3

Articles 8, 9 and 12

## STREETS SUBJECT TO STREET WORKS

**Table 1**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>	<i>(3)</i> <i>Description of the street works</i>
In the District of North Lincolnshire	Rosper Road	Works to repair and resurface the access and to maintain visibility splays in the areas cross hatched in red and blue at the point marked C on sheet 1 of the access and rights of way plans
In the District of North Lincolnshire	Rosper Road	Works to repair and resurface the access and to maintain visibility splays in the area cross hatched in red at the point marked A on sheet 1 of the access and rights of way plans
In the District of North Lincolnshire	Rosper Road	Works for the installation and maintenance of Work No. 6 in the area cross hatched in blue at the point marked B on sheet 1 of the access and rights of way plans

## SCHEDULE 4

Article 10

## ACCESS

## PART 1

THOSE PARTS OF THE ACCESSES TO BE  
MAINTAINED BY THE HIGHWAY AUTHORITY**Table 2**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the District of North Lincolnshire	Rosper Road	That part of the access in the area cross hatched in blue at the

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<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street</i>	<i>Description of relevant part of access</i>
		point marked C on sheet 1 of the access and rights of way plans

## PART 2

### THOSE PARTS OF THE ACCESSES TO BE MAINTAINED BY THE STREET AUTHORITY

**Table 3**

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street</i>	<i>Description of relevant part of access</i>
In the District of North Lincolnshire	Rosper Road	That part of the access cross hatched in red at the point marked A on sheet 1 of the access and rights of way plans
In the District of North Lincolnshire	Rosper Road	That part of the access cross hatched in red at the point marked C on sheet 1 of the access and rights of way plans

## SCHEDULE 5

Article 11

### TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF STREETS

**Table 4**

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Streets subject to temporary prohibition or restriction of use</i>	<i>Extent of temporary prohibition or restriction of use of street</i>
In the District of North Lincolnshire	Rosper Road	Temporary closure of the part of the street cross hatched in blue at the point marked B on sheet 1 of the access and rights of way plans

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## SCHEDULE 6

Article 21

## LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

Table 5

(1) <i>Class of compulsory acquisition and the creation of rights and the imposition of restrictions for the installation and use of the authorised development</i>	(2) <i>Means of all rights and restrictions necessary for the undertaker and/or those authorised by the undertaker</i>
(a)	To pass and repass on foot, with or without vehicles, plant and machinery
(b)	To construct, maintain, improve and protect access routes
(c)	To install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve an underground and overground gas pipeline up to 600 millimetres (nominal internal diameter), control systems and cables and any other ancillary apparatus and any other works as necessary
(d)	To install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve an overground electrical connection of up to 400 kilovolt, control systems and any other ancillary apparatus and any other works as necessary
(e)	To install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve water pipes, connections, structures and ancillary equipment; telecommunications cables and equipment; compressed air connections and ancillary equipment; electrical cables, connections and ancillary equipment; control systems and cables; closed circuit television and security system connections; and any other ancillary apparatus and any other works as necessary
(f)	To retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve an underground gas pipeline, control systems and cables and any other ancillary apparatus and any other works as necessary
(g)	To install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve water pipes, connections, structures

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(l)  <i>Class of compulsory acquisition and the creation of rights and the imposition of restrictions for the installation and use of the authorised development</i>	(2)  <i>Means of all rights and restrictions necessary for the undertaker and/or those authorised by the undertaker</i>
	and ancillary equipment and any other ancillary apparatus and any other works as necessary
(h)	To install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve security fencing, gates, boundary treatment and any other ancillary apparatus and any other works as necessary
(i)	To install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve gatehouses and weighbridges and any other ancillary apparatus and any other works as necessary
(j)	Restrictions on erecting buildings or structures, altering ground levels, planting trees or carrying out operations or actions which may obstruct, interrupt or interfere with the exercise of rights

**Table 6**

(l)  <i>Plot</i>	(2)  <i>Class of rights listed in Table 5 applicable to the plot</i>
2	(a), (b), (h), (i) and (j)
6	(a) and (g)
7	(a) and (g)
8	(a), (b), (h), (i) and (j)
9	(a), (b), (h), (i) and (j)
10	(a), (b), (h), (i) and (j)
12	(a), (e) and (j)
14	(a), (e), (b), (h), (i) and (j)
15	(a), (b), (h), (i) and (j)
16	(a), (c) and (j)
17	(a), (d), (e), (c) and (j)
18	(a), (e) and (j)
20	(a), (b), (c), (h), (i) and (j)
21	(a), (b), (h), (i) and (j)

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(1) <i>Plot</i>	(2) <i>Class of rights listed in Table 5 applicable to the plot</i>
22	(a), (b), (e), (h), (i) and (j)
23	(a), (b), (c), (d), (e), (h), (i) and (j)
24	(a), (d) and (j)
25	(a), (b), (h), (i) and (j)
26	(a), (b), (h), (i) and (j)
27	(a), (e) and (j)
28	(a), (b), (c), (e), (h), (i) and (j)
29	(a), (b), (c), (e), (h), (i) and (j)
30	(a), (b), (d), (h), (i) and (j)
31	(a), (b), (h), (i) and (j)
32	(a), (e), (b), (h), (i) and (j)
34	(a), (b), (h), (i) and (j)
35	(a), (b), (c) (h), (i) and (j)
33, 37-111	(a) and (f)

## SCHEDULE 7

Article 21

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

*Compensation enactments*

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

2.—(1) Without limitation to the scope of paragraph 1, the Land Compensation Act 1973<sup>(35)</sup> has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

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

<sup>(35)</sup> 1973 c.26.

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

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

(2) In section 5A(5A) (relevant valuation date) of the 1961 Act, for (a) and (b) substitute—

- “**(a)** the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 7 to the Immingham Open Cycle Gas Turbine Order 2020; and
- (b)** the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 7 to the Immingham Open Cycle Gas Turbine Order 2020 to acquire an interest in the land, and
- (c)** the acquiring authority enters on and takes possession of that land,

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

#### *Application of Part 1 of the 1965 Act*

**4.** Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 25 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the acquisition of land under article 18 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 21 (compulsory acquisition of rights etc.)—

- (a) with the modification specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

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

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

- (a) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restrictive covenant is or is to be enforceable.

(3) For section 7 of the 1965 Act there is substituted the following section—

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

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

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (persons without powers to sell their interests);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

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

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

(5) Section 11 (powers of entry) of the 1965 Act is modified as to secure that, where the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 18, 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; and sections 11A(36) (powers of entry: further notices of entry), 11B(37) (counter-notice requiring possession to be taken on a specified date), 12(38) (unauthorised entry) and 13(39) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20(40) (tenants at will etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 25(3) (modification of Part 1 of the Compulsory Purchase Act 1965) is also modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

#### “SCHEDULE 2A

#### COUNTER-NOTICE REQUIRING PURCHASE OF LAND

##### **Introduction**

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act (execution of declaration) as applied by article 23 of the Immingham Open Cycle Gas Turbine Order 2020 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) in respect of the land to which the notice to treat relates.

(2) But see article 24(3) of the Immingham Open Cycle Gas Turbine Order 2020 (acquisition of subsoil only) which excludes the acquisition of subsoil only from this Schedule.

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

##### **Counter-notice requiring purchase of land**

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

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

(37) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016 (c.22).

(38) Section 12 was amended by section 56(2) of and part 1 of Schedule 9 to, the Courts Act 1971 (c.23).

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

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



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

**Response to counter-notice**

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

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

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

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

8. If the authority do 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 serve 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.

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

SCHEDULE 8

Article 27

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

**Table 7**

<i>(1)</i> <i>Plot</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
01	Temporary use as a construction and laydown area to facilitate construction and commissioning of Work No.1, Work No.2, Work No.4, Work No.5 and Work No.6
03	Temporary use as a construction and laydown area to facilitate construction and commissioning of Work No.1, Work No.2, Work No.4, Work No.5 and Work No.6
04	Temporary use as a construction and laydown area to facilitate construction and commissioning of Work No.1, Work No.2, Work No.4, Work No.5 and Work No.6
11	Temporary use as a construction and laydown area to facilitate construction and commissioning of Work No.1, Work No.2, Work No.4, Work No.5 and Work No.6
13	Temporary use as a construction and laydown area to facilitate construction and commissioning of Work No.1, Work No.2, Work No.4, Work No.5 and Work No.6
19	Temporary use as a construction and laydown area to facilitate construction and commissioning of Work No.1, Work No.2, Work No.4, Work No.5 and Work No.6

SCHEDULE 9

Article 37

PROTECTIVE PROVISIONS

PART 1

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

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

2. In this Part—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of a utility undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989<sup>(41)</sup>), belonging to or maintained by that utility undertaker;
- (b) in the case of a utility undertaker within paragraph (b) of the definition of that term, 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 utility undertaker within paragraph (c) of the definition of that term—
  - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
  - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A (agreement to adopt water main or service pipe at future date) of the Water Industry Act 1991;
- (d) in the case of a utility undertaker within paragraph (d) of the definition of that term—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act, and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“utility undertaker” means—

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(41) 1989 c.29.

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- (a) any licence holder within the meaning of Part 1 (electricity supply) of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986;
- (c) water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991,

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

### **Precedence of the 1991 Act in respect of apparatus in the streets**

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

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

### **No acquisition etc. except by agreement**

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

### **Removal of apparatus**

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

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

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 (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.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

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

### **Facilities and rights for alternative apparatus**

7.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 42.

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

### **Retained Apparatus**

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

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(4) If a utility undertaker in accordance with sub-paragraph (1) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

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

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

### **Expenses and costs**

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

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

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

- (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 42 to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six 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.

**10.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

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

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

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### **Enactments and agreements**

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

## **PART 2**

### **FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS**

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

(2) In this Part—

“the 2003 Act” means the Communications Act 2003(42);

“electronic communications apparatus” has the same meaning as set out in paragraph 5 of the electronic communications code;

“the electronic communications code” has the same meaning as set out in section 106 (application of the electronic communications code) of the 2003 Act(43);

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

“network” means—

- (a) so much of a network or infrastructure system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106(5) of the 2003 Act; and
- (b) a network which the Secretary of State is providing or proposing to provide; and

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(42) 2003 c.21 as amended by the Digital Economy Act 2017 (c.30).

(43) Added by Schedule 1 of the Digital Economy Act 2017 (c.30).

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“operator” means a person in whose case the electronic communications code is applied by a direction under section 106(5) of the 2003 Act and who is an operator of a network.

**13.** The exercise of the powers of article 29 (statutory undertakers) is subject to Part 10 of Schedule 3A (the electronic communications code) of the 2003 Act.

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

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

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

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 42 (arbitration).

**15.** This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

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

## PART 3

### FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER

#### **Application**

**17.** For the protection of National Grid referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

#### **Interpretation**

**18.** In this Part of this Schedule—



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“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—

- (a) in the case of an electricity undertaker, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by that 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,

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

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and (unless otherwise specified) for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 (interpretation) of the Order and commencement is to be construed to have the same meaning save that for the purposes of this Part only the term commence and commencement include any below ground surveys, monitoring or operations or receipt and erection of construction plant and equipment within 15 metres of any apparatus;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary mitigation 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, will 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;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the undertaker including construct, use, repair, alter, inspect, renew or remove the apparatus;

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

“National Grid” means—

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- (a) National Grid Electricity Transmission plc (company number 2366977) whose registered office is at 1-3 Strand, London WC2N 5EH; and
- (b) National Grid Gas plc (company number 200600) whose registered office is at 1-3 Strand, London WC2N 5EH,

as the context requires; and

“specified works” means any of the authorised development or activities undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 23(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 23(2) or otherwise; and/or
- (c) includes in relation to gas apparatus any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”).

### **On Street Apparatus**

19. Except for paragraphs 20 (apparatus of undertakers in streets subject to temporary prohibition or restriction), 25 (retained apparatus: protection), 27 (expenses) and 28 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Grid, the other provisions of this 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 undertakers in streets subject to temporary prohibition or restriction**

20. Notwithstanding a temporary prohibition or restriction under the powers of article 11 (temporary prohibition or restriction on the use of streets), National Grid will be at liberty at all times to take all necessary access across any street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

#### **Protective works to buildings**

21.—(1) The undertaker, in the case of the powers conferred by article 33 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity and/or gas, as the case may be, by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), must—

- (a) pay compensation to National Grid for any loss sustained by it; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that undertaker, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or

default of an undertaker or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof may be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

### **Acquisition of land**

**22.**—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to this Order, the undertaker may not appropriate or acquire or take temporary possession of any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement, such agreement not to be unreasonably withheld.

(2) As a condition of agreement between the parties in paragraph 22(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 are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affect the provision of any enactment or 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 variation by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule will prevail.

(4) Any agreement or consent granted by National Grid under paragraph 25 or any other paragraph of this Part of this Schedule, must not be taken to constitute agreement under sub-paragraph (3).

### **Removal of apparatus**

**23.**—(1) If, in the exercise of the agreement reached in accordance with paragraph 22 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of an undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in question in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 24(1) below) the necessary facilities and rights—

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- (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 must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation must not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this 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 the prior 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**

**24.**—(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 and agreed with National Grid 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 National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration under paragraph 32 (arbitration) of this Part of this Schedule and the arbitrator may 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 of gas undertaker**

**25.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) 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 etc.;
- (d) the position of all apparatus;

- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
  - (f) any intended maintenance regimes.
- (3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.
- (4) Any approval of National Grid required under sub-paragraph (2)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
  - (b) must not be unreasonably withheld.
- (5) In relation to any work to which sub-paragraphs (1) and/or (2) 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 or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (4), 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 (5) or (7) 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.
- (7) 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 authorised development (or any relevant part thereof) for which protective works are required and National Grid must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).
- (8) If National Grid in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 17 to 19 and 22 to 24 apply as if the removal of the apparatus had been required by the undertaker under paragraph 23(2).
- (9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.
- (10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—
- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
  - (b) comply with sub-paragraph (11) at all times.
- (11) At all times when carrying out any works authorised under the Order the undertaker must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(G)47 Avoiding Danger from underground services".
- (12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme

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save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 28.

**Retained apparatus: protection of electricity undertaker**

**26.**—(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 tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to 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; and
- (g) an assessment of risks of rise of earth issues.

(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 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 the cable route;
- (f) written details of the operations and maintenance regime for the 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 26 tonnes to take the weight of overhead line construction traffic.

(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-paragraphs (2) or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraph (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 or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National 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 Grids' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 17 to 19 and 22 to 24 apply as if the removal of the apparatus had been required by the undertaker under paragraph 23(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph 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—

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

## **Expenses**

**27.—(1)** Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably anticipated or 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 development as are referred to in this Part of this Schedule 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 23(3); and/or

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- (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
  - (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
  - (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
  - (d) the approval of plans;
  - (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
  - (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.
- (2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.
- (3) If in accordance with the provisions of this Part of this Schedule—
- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
  - (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,
- and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (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 where 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) An amount which apart from this sub-paragraph would be payable to an undertaker 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**

**28.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction,



use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) 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 the cost reasonably 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 as aforesaid other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and 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; and
- (b) any part of the authorised development and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of National Grid with the benefit of this Order pursuant to section 156 of the Planning Act 2008 (benefit of order granting development consent) or article 7 (consent to transfer benefit of order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised development yet to be executed and not falling within this sub-paragraph (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 28.

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

(5) National Grid 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 28 applies where it is within National Grid’s reasonable gift 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.

### **Enactments and agreements**

**29.** 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 will affect 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.

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### **Co-operation**

**30.**—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or an undertaker requires the removal of apparatus under paragraph 23(2) or an undertaker makes requirements for the protection or alteration of apparatus under paragraph 27, 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 development and taking into account the need to ensure the safe and efficient operation of National Grid’s undertaking and each undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the statutory undertaker’s consent, agreement or approval to is required in relation to plans, documents or other information submitted by National Grid or the taking of action by National Grid, it must not be unreasonably withheld or delayed.

### **Access**

**31.** If in consequence of the agreement reached in accordance with paragraph 22(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**32.** Save for differences or disputes arising under paragraphs 23(2), 23(4), 24(1), 25 and 27(5) 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 42 (arbitration).

### **Notices**

**33.** The plans submitted to National Grid by the undertaker pursuant to paragraphs 25(1) and 26(1) must be sent to National Grid Plant Protection at [plantprotection@nationalgrid.com](mailto:plantprotection@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## **PART 4**

### **FOR THE PROTECTION OF PHILLIPS 66 LIMITED**

#### **Benefit of protective provisions**

**34.** For the protection of P66, the following provisions, unless otherwise agreed in writing between the undertaker and P66, have effect.

#### **Interpretation**

**35.** In this Part of this Schedule—

“applicable legislation” means European Union directives and regulations, statutes, regulations or subordinate or local legislation or notices or other requirements or directions of any relevant body (including any public body or agency or other authority) and any formal guidance notes or codes of conduct issued by or under the same, and common law but only in so far as the same are valid and have the force of law relating to—

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- (a) the use of or any activity on the VPI pipeline corridor; or
- (b) any process, conduct or activity (including without limit treatment, transport, storage, disposal or re) involving any hazardous material on under above in or about the VPI pipeline corridor; or
- (c) the health and safety of employees, visitors, contractors and other persons at or in the vicinity of the VPI pipeline corridor; or
- (d) the exercise of the specified rights; or
- (e) otherwise the protection of the environment; or
- (f) any requirement pertaining to reporting, notification or disclosure of information to any body or person concerning any matter referred above;

“affected assets” means apparatus owned or operated by P66 on or above ground which in the reasonable opinion of P66 would have the potential to be physically affected by the relevant works;

“apparatus” means any part of the pipelines and includes—

- (a) any structure existing at the time when a particular action is to be taken under this Part of this Schedule in which apparatus is or is to be lodged or which will give access to apparatus;
- (b) any cathodic protection, coating or special wrapping of the apparatus; and
- (c) all ancillary apparatus properly appurtenant to the pipelines, that would be treated as being associated with a pipe or systems of pipes under section 65(2) of the Pipe-Lines Act 1962<sup>(44)</sup>, as if the pipelines were a “pipe-line” in section 65(1) of that Act;

“CHP land” means the land on which the VPI Immingham CHP power station is sited as at the date of this Order, at Rosper Road, near Immingham;

“contamination” means any contamination by hazardous material which harms or damages or otherwise adversely affects or presents a significant risk of harm or damage or other adverse effects or a significant possibility of such harm or damage or other adverse effects to the environment or in relation to controlled waters the presence of substances which cause or are likely to cause pollution of controlled waters;

“controlled waters” has the meaning given to it in Section 104 of the Water Resources Act 1991;

“damage” includes all damage including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

“decision” means the decision of the relevant local planning authority (or of an inspector appointed by the Secretary of State to decide an appeal lodged against the local planning authority’s decision) to grant or refuse (as the case may be) a P66 planning permission;

“described land” means any land owned by or acquired by P66 as lies within the limits of lateral deviation authorised by a P66 planning permission;

“development” has the meaning given to it by section 55 of the Town and Country Planning Act 1990;

“development plan” means the development plan or a local plan operative in respect of any part of the described land following adoption of it by the local planning authority;

“diversion route” means the route to be agreed or determined in accordance with paragraph 98 of this Part of this Schedule;

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(44) 1962 c.58. Section 65 was amended by section 89(1) of, and paragraphs 1 and 2 Schedule 2 to, the Energy Act 2011 (c.16), S.I. 2000/1937 and S.I. 2011/2305.

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- “engineer” means an engineer appointed by P66 for the purposes of this Order;
- “existing gas pipeline” means that part of the existing underground gas pipeline within the Order land which connects the VPI Immingham CHP power station as at the date of this Order, at Rosper Road, near Immingham, to the National Grid Feeder No.9 located to the west of South Killingholme;
- “good industry practice” means the standards and practice which would reasonably and ordinarily be expected from a skilled and experienced operator of the relevant apparatus or infrastructure in the United Kingdom;
- “hazardous material” means any substance (whether in solid, liquid or gaseous form) which alone or in combination with others is capable of polluting the environment or capable of causing significant harm to the environment;
- “HOR” means the Humber Oil Refinery which at the date of this Order is owned and operated by P66;
- “local planning authority” means the planning authority responsible for determining an application for P66 planning permission;
- “P66” means Phillips 66 Limited (Company number 00529086) and any subsequent owner of the pipelines or HOR;
- “P66 address” means the postal address details to be provided pursuant to paragraph 103;
- “P66 email” means the email address details to be provided pursuant to paragraph 103;
- “P66 land” means any interest in land owned by P66 on the date of this Order and within the Order land;
- “P66 planning permission” means a planning permission within the meaning of Section 336 of the 1990 Act;
- “pipelines” means the 3 pipelines located in the pipeline corridor crossing the Order limits which at the date of this Order are owned and operated by P66 for the passage of multipurpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) of the Pipe-lines Act 1962;
- “pipeline corridor” means the corridor within the Order land within which the pipelines are located;
- “planning application” means an application for a P66 planning permission;
- “protected land” means such parts of the Order land as fall within the pipeline corridor;
- “relevant plan provision” means a policy or provision contained in a development plan restricting development or to the effect that no development may be carried out in some part of the described land where either—
- (a) the policy or provision is included for any reason related to the position of the VPI apparatus; or
  - (b) the decision to apply the policy or provision to that part of the described land was made for any reason related to the position of the VPI apparatus;
- “relevant work” means a work which may have an effect on the operation, maintenance, abandonment of or access to any of the pipelines;
- “scheme of works” means such works designed to investigate, rectify, remove and/or treat and render harmless contamination and its effects including making good any damage caused in so doing;
- “specified asset” means any asset owned and operated by P66 and forming part of the P66 land which would be physically affected by the specified works;

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“specified rights” means the rights as may be acquired by the undertaker in any part of the P66 land pursuant to the powers in Part 5 of this Order;

“specified work” mean any work carried out pursuant to the specified rights;

“VPI apparatus” means gas pipes, water pipes, electricity cables and other conducting media and associated supports, gantries, bridges, ladders, steps, gantries, walkways, cables, poles and stays, security cameras and ancillary equipment necessary for conducting steam, heat, electricity, gas, water, sewage, energy, telecommunications, data and all other services and utilities for the transport of all or any utilities;

“VPI pipeline corridor” means the corridor of land along the existing gas pipeline within which the undertaker acquires specified rights; and

“works details” means the following—

- (a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;
- (b) details of the undertaker and their principal contractors’ management of change procedures;
- (c) details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;
- (d) details of the electrical design of the authorised works in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to any of the pipelines;
- (e) details of the means by which the pipelines can be properly inspected and if necessary repaired during the construction and operation of the authorised development;
- (f) details of the emergency response plan as prepared in consultation with local emergency services and P66;
- (g) details of the assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to any pipeline cathodic protection system and the proposed remedial works;
- (h) any further particulars provided in accordance with paragraph 36(3) or 53(1);
- (i) a description of the land upon which the proposed works will be carried out including a written record of the ground conditions of the land and details of any historic land contamination; and
- (j) a description of any trees that will be removed pursuant to the carrying out of the proposed works.

#### **Authorisation of works details affecting pipelines or protected crossings**

**36.**—(1) Before commencing any part of a relevant work the undertaker must submit the works details to P66 in accordance with paragraph 103.

(2) The works details submitted under sub-paragraph (1) will be treated as having been received by P66 on the date—

- (a) that the undertaker obtains written acknowledgement of receipt from P66; or
- (b) two clear working days following the date that the work details were submitted under sub-paragraph (1),

whichever is earliest.

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(3) The undertaker must as soon as reasonably practicable provide such further particulars as P66 may, within 60 days from the receipt of the works details under sub-paragraph (2), reasonably require.

**37.** No part of a relevant work is to be commenced until one of the following conditions has been satisfied—

- (a) the works details supplied in respect of that relevant work under paragraph 36 have been authorised by P66; or
- (b) the works details supplied in respect of that relevant work under paragraph 36 have been authorised by an expert under paragraph 39(3); or
- (c) authorisation is deemed to have been given in accordance with paragraph 39(1).

**38.—(1)** Any authorisation by P66 required under paragraph 37(a) must not be unreasonably withheld but may be given subject to such reasonable conditions as P66 may require to be made for—

- (a) the continuing safety and operation or viability of the affected asset; and
- (b) the requirement for P66 to have—
  - (i) uninterrupted and unimpeded emergency access with or without vehicles to the affected asset at all times; and
  - (ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the affected asset.

(2) Where P66 can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the pipelines it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of P66 that the authorised development will not significantly adversely affect the safety of the pipelines.

(3) The authorised development must be carried out in accordance with the works details authorised under paragraph 37 and any conditions imposed on the authorisation under sub-paragraph (1).

(4) Where there has been a reference to an expert in accordance with paragraph 39(2) and the expert gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the award of the expert under paragraph 39(3).

**39.—(1)** In the event that—

- (a) no response has been received to the submission of the works details under paragraph 36(1) within 60 days of receipt by P66 under paragraph 36(2) and no further particulars have been requested under paragraph 36(3); or
- (b) authorisation has not been given within 45 days of receipt by P66 of the further particulars supplied under paragraph 36(3),

approval of the works details is to be deemed to be given and the relevant works may commence.

(2) In the event that—

- (a) the undertaker considers that P66 has unreasonably withheld its authorisation under paragraph 38(1); or
- (b) the undertaker considers that P66 has given its authorisation under paragraph 38(1) subject to unreasonable conditions,

the undertaker may refer the matter to an expert for determination under paragraph 102.

(3) Where the matter is referred to an expert under paragraph 39(2) the expert is to determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 38(1).

(4) Where the undertaker considers that P66 has unreasonably withheld its authorisation under paragraph 38(2) then the matter may be referred to an expert on the application of either party (after giving notice in writing to each other) appointed by the secretary of the United Kingdom Onshore Pipeline Association for determination under paragraph 102.

### **Notice of works**

**40.** The undertaker must provide to P66 a minimum of 28 days' notice prior to commencing any relevant work in order that an engineer can be made available to observe the relevant works and, when required, advise on the necessary safety precautions.

### **Further provisions about relevant works**

**41.** Before carrying out a relevant work the undertaker must—

- (a) provide P66 with baseline data for any existing cathodic protection of the affected asset; and
- (b) carry out a pipeline settlement and stress analysis to demonstrate any potential pipeline movement will not present an integrity risk to the affected asset.

### **Monitoring for damage to pipelines**

**42.—**(1) When carrying out the relevant work the undertaker must monitor the relevant affected assets to establish whether damage has occurred.

(2) Where any damage occurs to an affected asset as a result of the relevant work, the undertaker must immediately cease all work in the vicinity of the damage and must notify P66 to enable repairs to be carried out to the reasonable satisfaction of P66.

(3) If damage has occurred to an affected asset as a result of relevant work the undertaker will, at the request and election of P66—

- (a) afford P66 all reasonable facilities to enable it to fully and properly repair and test the affected asset and pay to P66 its costs incurred in doing so including the costs of testing the effectiveness of the repairs and cathodic protection and any further works or testing shown by that testing to be reasonably necessary; or
- (b) fully and properly repair the affected asset as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the satisfaction of P66 to have effectively repaired the affected asset before any backfilling takes place.

(4) If in the course of carrying out repairs under sub-paragraph (3)(a) or (3)(b) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which 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 to be necessary, then, if it involves cost in the execution of the repairs exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which would be payable to P66 under sub-paragraph (3)(a), or incurred by the undertaker under sub-paragraph (3)(b), by virtue of paragraph (3) will be reduced by the amount of that excess.

(5) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where P66 agrees otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

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(6) Following the completion of a relevant work if damage is found to have occurred to an affected asset as a result of the relevant work, sub-paragraphs (2) to (4) of this paragraph apply to that damage.

(7) In relation to the approved assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to any pipeline cathodic protection system, the undertaker must undertake any necessary remedial work.

(8) In the event that the undertaker does not carry out necessary remedial work in a timely manner then P66 is entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

**43.**—(1) If any damage occurs to a pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and P66 must be notified immediately.

(2) Where there is leakage or escape of gas, the undertaker must immediately—

- (a) remove all personnel from the immediate vicinity of the leak;
- (b) inform P66;
- (c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 350 metres from the leakage; and
- (d) assist emergency services as may be requested.

#### **Compliance with requirements, etc. applying to the protected land**

**44.**—(1) Subject to sub-paragraph (2), in undertaking any works in relation to the protected land or exercising any rights relating to or affecting owners of the protected land, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the protected land.

(2) The undertaker is not bound by any condition, requirement or regulation that is—

- (a) introduced after the date on which notice of the works was given under paragraph 40; or
- (b) determined by the expert following a determination under paragraph 102 to unreasonably—
  - (i) create significant engineering, technical or programming difficulties; or
  - (ii) materially increase the cost of carrying out the works.

(3) Sub-paragraph (2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority (exercising its public functions) or the police.

#### **Restriction on exercising powers**

**45.** The undertaker must in the exercise of the powers conferred by this Order at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on P66, including any disruption to access and supplies of utilities and other services that are required by P66 in order to carry out its operations.

#### **Insurance**

**46.**—(1) Before carrying out any part of the authorised development on the protected land, the undertaker must put in place a policy of insurance with a reputable insurer against its liabilities under paragraph 48 in accordance with the terms and level of cover notified under sub-paragraph (2) or, in the case of dispute, in accordance with the terms and level of cover determined by an expert under paragraph 102, and evidence of that insurance must be provided on request to P66.



(2) Not less than 30 days before carrying out any part of the authorised development on the protected land or before proposing to change the terms of the insurance policy, the undertaker must notify P66 of details of the terms of the insurance policy that it proposes to put in place, including the proposed level of the cover to be provided.

(3) The undertaker must maintain insurance in relation to the authorised development affecting P66 during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover specified in sub-paragraph (2) or at such level as may otherwise be determined by an expert under paragraph 102.

47. If P66 has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 46—

- (a) P66 may refer the matter to an expert for determination under paragraph 102; and
- (b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under paragraph 102 is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

### Costs

48.—(1) The undertaker must repay to P66 all reasonable fees, costs, charges and expenses reasonably incurred by them in relation to these protective provisions in respect of—

- (a) authorisation of works details submitted by the undertaker under paragraph 36 and the imposition of conditions under paragraph 38;
- (b) the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 40;
- (c) the repair and testing of a pipeline or protected crossing under paragraph 42; and
- (d) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 46,

including the reasonable costs incurred by P66 in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to P66 to carry out its functions under these protective provisions.

(2) The undertaker must indemnify and keep P66 indemnified against all reasonable costs, charges, damages and expenses, and against consequential loss and damage which may be occasioned or reasonably incurred by P66—

- (a) by reason of the construction, operation, maintenance, repair and decommissioning of the authorised development or the failure of it; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction, operation, maintenance, repair and decommissioning of the authorised development,

and the fact that any act or thing may have been done by P66 on the protected land on behalf of the undertaker or in accordance with plans approved by or on behalf of P66 or in accordance with any requirement of the engineer appointed by P66 or under his supervision does not (if it was done without negligence on the part of P66 or of any person in their employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(3) P66 must give the undertaker reasonable notice of any claim or demand under sub-paragraph (2) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(4) P66 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

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the undertaker is or will become liable under this Part of this Schedule 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.

(5) In the assessment of any sums payable to P66 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, P66 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.

### **Further protection in relation to the exercise of powers under the Order**

**49.** The undertaker must give written notice to P66 of the terms and level of cover of any guarantee or alternative form of security put in place and any such notice must be given no later than 28 days before any such guarantee or alternative form of security is put in place specifying the date when the guarantee or alternative form of security comes into force.

**50.** The undertaker must give written notice to P66 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), 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.

**51.** The undertaker must, when requested to do so by P66, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 39 (certification of plans etc.) in the form of a computer disc with read only memory or such other format as may be agreed between the relevant parties.

**52.** Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to P66.

### **Exercise of the specified rights**

**53.**—(1) Before commencing any part of a specified work the undertaker must submit the works details to P66.

(2) The works details submitted under sub-paragraph (1) will be treated as having been received by P66 on the date—

- (a) that the undertaker obtains written acknowledgement of receipt from P66; or
- (b) two clear working days following the date that the work details were submitted under sub-paragraph (1),

whichever is earliest.

(3) The undertaker must as soon as reasonably practicable provide such further particulars as P66 may, within 60 days from the receipt of the works details under sub-paragraph (2), reasonably require.

**54.** No part of a specified work is to be commenced until one of the following conditions has been satisfied—

- (a) the works details supplied in respect of that specified work under paragraph 53 have been authorised by P66; or

(b) the works details supplied in respect of that specified work under paragraph 53 have been authorised by an expert under paragraph 56(3) or

(c) authorisation is deemed to have been given in accordance with paragraph 56(1).

**55.**—(1) Any authorisation by P66 required under paragraph 54(a) must not be unreasonably withheld but may be given subject to such reasonable conditions as P66 may require to be made for—

(a) the continuing safety and operation or viability of the specified asset; and

(b) the requirement for P66 to have—

(i) uninterrupted and unimpeded emergency access with or without vehicles to the specified asset at all times; and

(ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the specified asset.

(2) Where P66 can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the HOR it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of P66 that the authorised development will not significantly adversely affect the safety of the HOR.

(3) The authorised development must be carried out in accordance with the works details authorised under paragraph 54 and any conditions imposed on the authorisation under sub-paragraph (1).

(4) Where there has been a reference to an expert in accordance with paragraph 56(2) and the expert gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the award of the expert under paragraph 56(3).

**56.**—(1) In the event that—

(a) no response has been received to the submission of the works details under paragraph 53(1) within 60 days of receipt by P66 under paragraph 53(2) and no further particulars have been requested under paragraph 53(3); or

(b) authorisation has not been given within 45 days of receipt by P66 of the further particulars supplied under paragraph 53(3),

approval of the works details is to be deemed to be given and the relevant works may commence.

(2) In the event that—

(a) the undertaker considers that P66 has unreasonably withheld its authorisation under paragraph 55(1); or

(b) the undertaker considers that P66 has given its authorisation under paragraph 55(1) subject to unreasonable conditions,

the undertaker may refer the matter to an expert for determination under paragraph 102.

(3) Where the matter is referred to an expert under sub-paragraph (2) the expert is to determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 55(1).

(4) Where the undertaker considers that P66 has unreasonably withheld its authorisation under sub-paragraph (2) then the matter may be referred to an expert on the application of either party (after giving notice in writing to each other) appointed by the secretary of the United Kingdom Onshore Pipeline Association for determination under paragraph 102.

**57.** In the exercise of the specified rights the undertaker must—

(a) take all reasonable and proper precautions to ensure that damage to property located on any part of the P66 land is minimised or avoided so far as reasonably practicable including

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to any structures in, on or under that land or to any drains or other conducting media on or under it;

- (b) cause the least practicable disturbance to or interference with the business and operations of P66;
- (c) ensure that all maintenance work is carried out under the supervision of an engineer acting on behalf of the undertaker who will appoint a local representative to supervise the execution of the works and to maintain contact with P66;
- (d) provide P66 with the name, address and telephone number of the person appointed under sub-paragraph (c); and
- (e) accept responsibility for the actions and omissions of its contractors and of their subcontractors and of all persons employed in connection with works, except for actions carried out or omissions directed expressly at the request of P66.

**58.** The undertaker must with all practicable speed reinstate and put any part of the P66 land opened or broken up in the exercise of the specified rights into as good a condition in all respects so far as is reasonably practicable as it was in before it was opened or broken up.

**59.** The undertaker must following a written request by P66 replace or restore any growing crops, trees, hedges, bushes or plants removed in the exercise of the specified rights, except where in the reasonable opinion of the undertaker they may cause damage to the VPI apparatus.

**60.** The undertaker must keep the VPI apparatus in good and substantial repair and condition in accordance with good industry practice.

**61.** In exercising the specified rights the undertaker must at its own cost comply with all applicable legislation.

**62.** The undertaker must as soon as reasonably practicable following a written request from P66 provide written information in relation to the VPI apparatus, the VPI pipeline corridor, compliance with applicable legislation, or the exercise of the specified rights or any activity incidental thereto, in each case as P66 may reasonably require.

**63.** The undertaker must indemnify P66 against losses incurred or sustained directly as a consequence of or in connection with any breach of any of obligations on the part of the undertaker in this Part of this Schedule or any act or omission of the undertaker, its employees, contractors or agents or any person acting expressly or impliedly with the undertaker's authority or permission including all costs and expenses incurred by P66 in connection with any steps it may take to remedy any breach by the undertaker under this Part of this Schedule.

**64.** The undertaker must permit P66 and its agents, contractors and workmen and others authorised by P66 with all necessary plant, machinery and equipment at all times in cases of emergency and otherwise at any reasonable times on reasonable prior written notice to enter the VPI pipeline corridor for such period as is reasonably necessary to examine the VPI pipeline corridor;

**65.** P66 must take all reasonable and proper precautions to ensure that in undertaking any examination pursuant to paragraph 64 any damage to the VPI apparatus is avoided or minimised.

**66.** P66 must—

- (a) not erect construct or place any building or structure, carry out any excavation or plant or suffer to be planted or otherwise permit to subsist any trees on the VPI pipeline corridor without the written consent of the undertaker;
- (b) not materially raise or lower the existing level of the surface of the VPI pipeline corridor without the written consent of the undertaker;
- (c) not undermine or damage the VPI apparatus, the VPI pipeline corridor or take such other action as may interfere with the use and free flow and passage of the relevant media

through the VPI apparatus or to do anything which would reasonably foreseeably inhibit or prevent the undertaker from complying with this Part of this Schedule;

- (d) on all occasions when P66 may suffer any loss or anticipate or receive any third party claim against it resulting from any action by the undertaker or in any way arising out of the existence of the VPI apparatus P66 will use all reasonable endeavours to mitigate its losses; and
- (e) have due regard in the light of information made available in writing by the undertaker and to the safety and integrity of the VPI apparatus in carrying out operations on any part of the P66 land.

**67.** The undertaker must take all reasonable precautions to ensure that other than authorised discharges no hazardous material leaks, spills or escapes are discharged from the VPI apparatus and that no contamination will occur as a result of the use by the undertaker of the pipeline corridor or the exercise of its specified rights.

**68.—(1)** The undertaker must indemnify and keep P66 indemnified from and against all losses incurred in respect of any contamination in or on the VPI pipeline corridor or which escapes or migrates from the VPI pipeline corridor to the HOR which relates to the exercise of the specified rights.

(2) The undertaker is not liable under sub-paragraph (1) in respect of any contamination unless P66 gives written notice to the undertaker providing reasonable particulars of the basis of its claim including an estimate of the amount of such claim.

(3) P66 must give written notice under sub-paragraph (2) as soon as reasonably practicable.

**69.—(1)** If during the exercise of the specified rights it appears to the undertaker that there is contamination in or on the VPI pipeline corridor the undertaker must give written notice of such contamination to P66.

(2) On receipt of such written notice under sub-paragraph (1) the undertaker and P66 may jointly instruct environmental consultants in terms agreed between the parties to produce and implement a scheme of works.

**70.** P66 must use its reasonable endeavours to comply at the cost of the undertaker and (save in the case of emergency) upon notice with all reasonable written requests of the undertaker in relation to the use of the VPI pipeline corridor that are requested for the safety and protection of the VPI apparatus.

**71.—(1)** Subject to sub-paragraph (2) P66 must not make any admission of liability to a third party making or bringing a claim, demand or proceedings or settle or compromise it without the consent in writing of the undertaker, such consent not be unreasonably withheld or delayed.

(2) Sub-paragraph (1) does not apply to the extent that such conduct is contrary to what is required by law or by any authority or compliance with the sub-paragraph would have an adverse effect on the liabilities or goodwill of P66.

(3) The undertaker is entitled, with the consent of P66 (such consent not to be unreasonably withheld or delayed unless to give such consent might reasonably be considered likely to have a materially adverse effect on the liabilities or goodwill of P66), to negotiate a settlement of any claim, demand or proceedings against P66 and to conduct on behalf of P66 any litigation which may arise in respect of the claim, demand or proceedings.

**72.** The undertaker is not required to comply with this Part of this Schedule in a case of emergency but in that case it must give to P66 notice as soon as is reasonably practicable of the emergency and must comply with this Part of this Schedule in so far as is reasonably practicable in the circumstances.

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**73.** Any information or data obtained by the undertaker from carrying out activities under this Part of this Schedule must be treated by the undertaker as confidential and must only be disclosed to a third party who is connected with the undertaker's activities and who needs the relevant information or data, or it may be disclosed with the consent of P66 or where the undertaker is required to disclose information or data by law or by a court of law or other competent authority.

**74.** Where any trees are removed by the undertaker in carrying out a specified work, all timber will remain the property of P66 and will be cut and disposed of in accordance with the reasonable requirements of P66.

**75.** Where timber is cut and disposed of by the undertaker pursuant to paragraph 74 the undertaker will compensate P66 for any loss thereby properly and reasonably incurred.

**76.** Unless otherwise agreed between the undertaker and P66, any fencing required for the purposes of exercising the specified rights will comprise of a demarcation fence of posts and wire provided that where necessary such fencing complies with any requirement of any statutory or other body or pursuant to any statute or other obligation.

**77.** All temporary fencing will be maintained in position during the carrying out of any specified work and until reinstatement and will then be removed by and at the cost of the undertaker (unless otherwise agreed with P66).

**78.** In exercising the specified rights, and if reasonably required by P66—

- (a) topsoil excavated during a specified work will be kept apart from all other excavated material and will not be run over by any machinery and all cultivated turf will be carefully reinstated or replaced with turf of equivalent quality;
- (b) all trenches dug during a specified work will be backfilled as soon as reasonably practicable and care will be taken to ensure that backfill material is properly consolidated in accordance with good industry practice;
- (c) excavated material will be replaced with topsoil uppermost so as to restore the working area to its former condition so far as is reasonably practicable and no large stones are left on the surface after reinstatement of the trench;
- (d) large stones and any surplus subsoil will be removed by the undertaker where specifically requested by P66 and where deemed by the undertaker to be necessary;
- (e) all construction debris, tools, equipment, temporary work and litter will be removed from the working area around a specified work as soon as reasonably practicable;
- (f) the topsoil of agricultural land will be left in a loose and workable condition to its full depth; and
- (g) compacted subsoil will be loosened with a cultivator where the topsoil has been removed and before it is replaced.

**79.** Where the undertaker is to relay or move any length of the existing gas pipeline it will be laid to contour at a depth of not less than 1.1 metres from the ground surface to the top of the pipeline and where this depth cannot reasonably be achieved by the undertaker it will give written details of this to P66.

**80.** Wherever the exercise of the specified rights may reasonably require it, temporary underpinning, supports and other protective measures for buildings, structures and apparatus in or adjacent to the pipeline trench will be of proper design and sound construction and will be securely placed to the reasonable satisfaction of P66 and in accordance with good industry practice.

**81.** Where the existing gas pipeline crosses below a ditch or stream it will be protected by a concrete slab and the pipe will be located at such a depth so as to provide at least 1.1 metres cover from the true cleaned bottom of the ditch or stream to the top of the pipe. All ditches, open

drains or watercourses interfered with by the exercise of the specified rights will be maintained in effective condition during works by the undertaker and restored to as good a condition as before the commencement of the works.

**82.** With the assistance of P66 in locating water supplies, the undertaker will use all reasonable endeavours to ensure that existing water supplies, drainage systems and any other services are not interrupted or detrimentally affected during the exercise of the specified rights, failing which the undertaker will make good all damage caused to the reasonable satisfaction of P66 or make available an adequate and unpolluted alternative supply or system as the case may require. Supplies of water to stock will not be completely withdrawn without the written consent of P66. The undertaker will take all reasonable practicable steps to prevent the pollution of water supplies or watercourses. In the event of such pollution occurring because of the exercise of the specified rights, the undertaker will pay compensation to P66 in respect of any costs, claims, damage or expenses arising.

**83.** Particular care will be taken to ensure that minimum damage or disturbance to land drains is caused by the exercise of the specified rights. The position of all land drains cut or disturbed during excavation will be prominently marked by pegs at both sides of the trench immediately following their location. Such land drains will also be logged and a subsequent land drainage record kept by the undertaker for future reference. The undertaker will engage a land drainage expert to design appropriate pre-construction drainage, where necessary, and also any necessary land drainage reinstatement. The methods to be employed in repairing damage to field drainage systems will be agreed with P66 and, failing agreement, will be referred to an expert in accordance with paragraph 103.

**84.** The installation of marker posts or cathodic protection marker posts will wherever reasonably practicable be sited by agreement between the undertaker and P66. As far as is reasonably practicable marker posts will be sited in or adjacent to hedges or fences. If P66 so requires, marker posts will be placed on both sides of fences or hedges. All marker posts will be properly maintained and the undertaker will take all reasonable steps to ensure that marker posts remain visible at all times.

**85.—(1)** The undertaker must ensure that the existing gas pipeline is cathodically protected against corrosion and any buildings and structures within HOR likely to be affected will be suitably protected provided reasonable facilities are given by P66 for this to be done.

(2) Sub-paragraph (1) does not require the undertaker to do anything in respect of pipes, cables or like apparatus or any building or structure laid or constructed after the existing gas pipeline was first laid.

**86.** During the course of the exercise of the specified rights, the undertaker must regard fossils, coins or other articles of value which are discovered as being the property of P66 and will acknowledge that P66 will not be deemed to have surrendered (whether to the undertaker or its contractors) any right to any reward under the Treasure Act 1996. The undertaker will make all reasonable efforts to comply with the reasonable requirements of P66 with respect to such objects (and will oblige its contractors to do so) provided that P66 will pay any costs reasonably incurred by the undertaker in so doing.

**87.** In exercising the specified rights, the undertaker must provide specific instructions to the contractor to notify them that the contractors workers cannot trespass outside the working area or any access to it.

**88.** In the event that the undertaker decides to abandon the whole or any part of the existing gas pipeline through the HOR, the undertaker must purge the relevant part of the existing gas pipeline and otherwise render it permanently safe and harmless, and must provide reasonable details of the works undertaken to P66.

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**89.** The undertaker must not permit caravans or huts to be brought on to the VPI pipeline corridor for sleeping accommodation and will ensure that all workmen leave the VPI pipeline corridor at the conclusion of their duties each day.

**90.** A specified work will normally cease at or before dusk but in the event of work continuing beyond dusk P66 will be notified in writing in advance.

**91.** The undertaker will not light fires on the VPI pipeline corridor without the consent of P66.

**92.** Whenever the undertaker intends to use explosives in connection with the exercise of the specified rights, reasonable notice of such intention must be given to P66 of the working area including notice of the timing of blasting operations.

### **Diversion Provisions**

**93.** In the following provisions of this Part of this Schedule the described land excludes the CHP land unless and until P66 has permanent occupational control of the CHP land (excluding land in which rights have been acquired by the undertaker under article 21 of the Order).

**94.** If P66 wishes to carry out any development of the described land it must—

- (a) supply to the undertaker full details of the proposed development in writing as soon as reasonably possible and in any event not less than two months before the submission of the planning application for the proposed development and keep the undertaker reasonably informed in writing of the progress of the planning application;
- (b) have due regard to any reasonable proposals of the undertaker for the purpose of safeguarding the VPI apparatus and minimising the interference to the VPI apparatus and its use; and
- (c) use its reasonable endeavours with the assistance (if requested) of the undertaker (whose assistance is to be at no cost to P66) to arrange the development so as to avoid the diversion of the VPI apparatus, and must consult with the undertaker and have due regard to the undertaker's comments and representations.

**95.** P66 must submit a copy to the undertaker of any P66 planning permission for development in on over or under the described land within a period of 28 days of receipt of the decision.

**96.—(1)** If following consultation under paragraph 94—

- (a) a P66 planning permission is granted but the development is prevented for any reason relating to the presence or position of the VPI apparatus or by such P66 planning permission being made subject to a condition which prevents the development for any reason related to the position of the VPI apparatus or renders it unviable; or
- (b) a P66 planning permission for the development is refused for any reason related to the position of the VPI apparatus or the existence or effect of a relevant plan provision,

then P66 must give written notice to the undertaker.

**(2)** Any notice given pursuant to sub-paragraph (1) must state whether P66—

- (a) intends to submit a further planning application, planning appeal or other representation to the relevant planning authority which seeks to address the reason that is preventing the development or rendering it unviable or that has otherwise resulted in the refusal of the P66 planning permission (insofar as such reason relates to the position of the VPI apparatus); or
- (b) requires the diversion of the VPI apparatus or part of the VPI apparatus.

**(3)** Where P66 gives written notice that it intends to submit a further planning application, planning appeal or other submission to the local planning authority—



(a) the undertaker must use reasonable endeavours to assist P66 so far as matters relate to the VPI apparatus; and

(b) P66 must comply with the requirements under paragraph 94.

(4) Any diversion of the VPI apparatus pursuant to sub-paragraph (1) must be only the extent of diversion that is required in order to ensure that the development notified by P66 to the undertaker pursuant to paragraph 94 is not prevented.

(5) Following receipt of the notice under sub-paragraph (1) the undertaker must confirm in writing to P66 within three months of the date of receipt of the notice whether it will either—

(a) carry out such works to the VPI apparatus as may be necessary so that the position of the VPI apparatus does not materially affect the development; or

(b) divert the VPI apparatus or part of it along the diversion route.

**97.**—(1) If P66 obtains a P66 planning permission for the development but does not give notice in accordance with paragraph 96 it must nevertheless notify the undertaker that a P66 planning permission has been obtained and provide a copy of it to the undertaker.

(2) If following receipt of the notice under sub-paragraph (1) the undertaker is of the reasonable opinion that the development would be likely to cause damage to the VPI apparatus or any interference with the exercise of the specified rights it may at its sole cost and expense divert the VPI apparatus or part thereof along the diversion route or carry out any such works as are described in paragraph 96(5)(a).

(3) Where the undertaker elects to carry out works under sub-paragraph (2) it is not required to implement any such works before the expiry of the period of six months from the date of the notice under sub-paragraph (1).

**98.** The diversion route must be within the described land and must be agreed between P66 and the undertaker.

**99.** If the VPI apparatus is to be diverted under any paragraph of this Part then P66 must grant the necessary rights to the undertaker to carry out the diversion, and to maintain and use the relevant diverted VPI apparatus.

**100.** Subject to paragraph 97(3), where the undertaker elects to carry out works under paragraph 96(5) it must use its reasonable endeavours to carry out such works as soon as reasonably practicable.

**101.** If there is a dispute about the diversion route or the rights to be granted pursuant to paragraph 98 then either party may refer the matter to an expert for determination under paragraph 102 of this Part of this Schedule.

### **Expert determination**

**102.**—(1) Except as provided in sub-paragraph (7), article 42 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

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(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;
- (e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner, while giving consideration to any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations;
- (f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;
- (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;
- (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (i) the constructability notes; and
- (j) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42.

### **Service of Notices**

**103.**—(1) P66 must as soon as reasonably practicable following a written request from the undertaker provide details of the P66 address and P66 email.

(2) A notice or other document required or authorised to be served on P66 under this Part of the Schedule (except under sub-paragraph (1)) must be served—

- (a) by post to the P66 address; and
- (b) by electronic transmission to the P66 email,

or to such other postal or electronic mail address which P66 may from time to time notify to the undertaker.

(3) In the event that P66 does not provide the P66 address and P66 email within 14 days of the undertaker's request pursuant to sub-paragraph (1) then sub-paragraph (2) does not apply and the undertaker must—

- (a) serve any notice or document on P66 at its registered office; and
- (b) send a copy of such notice or document to the HOR marked for the attention of the refinery manager.

## PART 5

### FOR THE PROTECTION OF ANGLIAN WATER

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

**105.** In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in not less efficient a manner than previously;

“apparatus” means—

- (a) any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under the Water Industry Act 1991; and
- (c) 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 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 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; and

“plan” includes sections, drawings, specifications and method statements.

**106.** The undertaker must not interfere with, build over or near to any apparatus within the Order land or carry out the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or carry out any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips which are the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus—

- (a) 2.25metres where the diameter of the pipe is less than 150 millimetres;
- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres;
- (c) 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres; and
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres,

unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker in writing.

**107.** The alteration, extension, removal or re-location of any apparatus must not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2016 or other legislation and any other associated consents are obtained by the undertaker, and any approval or agreement required from Anglian Water on alternative

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outfall locations as a result of such re-location are approved, such approvals from Anglian 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 Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be carried out only in accordance with the plan and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

**108.** In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, an alteration or extension must not take place until Anglian Water has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

**109.** Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement with Anglian Water, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker must, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 42 (arbitration).

**110.** If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

**111.** 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 will immediately be given to Anglian Water and afforded the same protection as other Anglian Water apparatus.

**112.** If for any reason or in consequence of the construction of any of the works referred to in paragraphs 107 to 109 and 111 above 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 Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water.

**113.** Anglian Water must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, penalties and costs to which the provisions of this Part 5 apply. If requested to do so by the undertaker, Anglian Water shall provide an explanation of how any claim has been minimised. The undertaker shall only be liable under paragraph 112 for claims reasonably incurred by Anglian Water.

## PART 6

### FOR THE PROTECTION OF CLH PIPELINE SYSTEM (CLH-PS) LTD

**114.** For the protection of CLH Pipeline System (CLH-PS) Limited, the following provisions, unless otherwise agreed in writing between the undertaker and CLH Pipeline System (CLH-PS) Ltd, have effect.

**115.** In this Part of this Schedule—

“CLH” means CLH Pipeline System (CLH-PS) Ltd (company number 09497223); and

“the pipeline” means the pipeline crossing the Order limits owned and operated by CLH used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipeline as are specified by section 65(2) (meaning of “pipe-line”) of the Pipe-lines Act 1962.

**116.** Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the pipeline and access to it, the undertaker must submit to CLH plans and sections of the proposed works and such further particulars as CLH may, within 28 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

**117.** No works comprising any part of the authorised development which would have an effect on the operation, maintenance or abandonment of the pipeline and access to it are to be commenced until plans and sections in respect of those works submitted under paragraph 116 have been approved by CLH.

**118.** Any approval of CLH required under paragraph 117 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as CLH may require to be made for—

- (a) the continuing safety and operational viability of the pipeline; and
- (b) the requirement for CLH to have uninterrupted and unimpeded access to the pipeline at all times.

## PART 7

### FOR THE PROTECTION OF CENTRICA STORAGE LIMITED

**119.** For the protection of Centrica Storage Limited, the following provisions, unless otherwise agreed in writing between the undertaker and Centrica Storage Limited, have effect.

**120.** In this Part of this Schedule—

“Centrica” means Centrica Storage Limited (company number 03294124); and

“the pipeline” means the pipeline crossing the Order limits owned and operated by Centrica used at various times for the passage of stabilised liquid condensate and all ancillary apparatus including such works and apparatus properly appurtenant to the pipeline as are specified by section 65(2) (meaning of “pipe-line”) of the Pipe-lines Act 1962.

**121.** Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the pipeline and access to it, the undertaker must submit to Centrica plans and sections of the proposed works and such further particulars as Centrica may, within 28 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

**122.** At the same time as providing the plans and sections to Centrica pursuant to paragraph 121, the undertaker must also provide a copy of the construction traffic management plan and the construction environmental management plan, in each case being the document approved by the

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relevant planning authority pursuant to the requirements or where no such approval has been given at that time, the draft of the relevant document.

**123.** No works comprising any part of the authorised development which would have an effect on the operation, maintenance or abandonment of the pipeline and access to it are to be commenced until plans and sections in respect of those works submitted under paragraph 121 have been approved by Centrica.

**124.** Any approval of Centrica required under paragraph 123 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as Centrica may require to be made for—

- (a) the continuing safety and operational viability of the pipeline; and
- (b) the requirement for Centrica to have uninterrupted and unimpeded access to the pipeline at all times.

**125.—(1)** Subject to sub-paragraphs (2) to (5), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to the pipeline (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of Centrica; or
- (b) there is any interruption in the supply of the service provided by Centrica,

the undertaker must bear and pay the cost reasonably incurred by Centrica in making good such damage or restoring the supply and make reasonable compensation to Centrica for any other direct expenses, loss, damages, penalty or other direct costs incurred by it, by reason, or in consequence of, any such damage or interruption.

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

(3) Centrica must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) The total liability of the undertaker in respect of this paragraph 125 shall be limited to the sum of ten million pounds (£10,000,000) for any one event or series of connected events.

(5) Any difference arising between the undertaker and the Centrica under this Part of this Schedule must be referred to and settled by arbitration under article 42 (arbitration).

## PART 8

### FOR THE PROTECTION OF ABLE HUMBER PORTS LIMITED

**126.** For the protection of Able Humber Ports Limited (company no. 107029) as referred to in this Part of this Schedule the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Able.

**127.** In this Part of this Schedule—

“Able” means Able Humber Ports Limited (company no. 107029) whose registered office is at 44 Esplanade, St Helier, Jersey JE4 9WG;

“the Able authorised development” means the development authorised by the Able Order;

“the Able Order” means the Able Marine Energy Park Development Consent Order 2014(45);  
“the Able Order land” means the Order land (as defined in the Able Order) or any part of it;  
“the Able Order limits” means the Order limits as defined in the Able Order;  
“the OCGT authorised development” means the development authorised by this Order; and  
“the respective authorised developments” means the OCGT authorised development and the Able authorised development.

### **Co-operation during construction**

**128.** The undertaker must not exercise the powers granted under this Order so as to hinder or prevent—

- (a) the construction, operation, use or maintenance of the Able authorised development; or
- (b) access to all parts of the Able authorised development,

otherwise than with the prior written consent of Able.

**129.** If the undertaker proposes to alter the layout of the existing highway access points within plots 2, 8 or 9, it must not submit written details for numbered work 2 so far as it is within those plots for approval to the relevant planning authority in accordance with requirement 5(3) or requirement 8(1) without first obtaining the written consent of Able in respect of the design and layout of the relevant part of numbered work 2.

**130.** The undertaker must not submit written details for numbered work 6 so far as it is within plots 6 or 7 for approval to the relevant planning authority in accordance with requirement 5(6) without first obtaining the written consent of Able in respect of the siting, design and layout of the relevant part of numbered work 6.

**131.—**(1) The undertaker must not exercise the powers under any of the articles of the Order specified in sub-paragraph (2) over or in respect of the Able Order land otherwise than with the prior written consent of Able.

(2) The articles referred to in sub-paragraph (1) are—

- (a) article 8 (power to alter layout etc. of streets);
- (b) article 9 (street works);
- (c) article 10 (construction and maintenance of new or altered means of access);
- (d) article 11 (temporary prohibition or restriction of use of streets);
- (e) article 12 (access to works);
- (f) article 14 (traffic regulation);
- (g) article 16 (authority to survey and investigate the land);
- (h) article 18 (compulsory acquisition of land);
- (i) article 19 (power to override easements and other rights);
- (j) article 21 (compulsory acquisition of rights etc.);
- (k) article 22 (private rights);
- (l) article 26 (rights under or over streets);
- (m) article 27 (temporary use of land for carrying out the authorised development);
- (n) article 28 (temporary use of land for maintaining the authorised development); and

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(o) article 29 (statutory undertakers).

(3) In the event that Able withholds its consent pursuant to sub-paragraph (1) it must notify the undertaker in writing of the reasons for withholding such consent and (if applicable) the time period during which such consent will be withheld.

**132.**—(1) Wherever in this Part of this Schedule provision is made with respect to the approval or consent of Able, that approval or consent must be in writing (and subject to such reasonable terms and conditions as Able may require), and must not be unreasonably withheld or delayed.

(2) In the event that Able does not respond in writing to a request for approval or consent within 28 days of receipt of such a request, Able is deemed to have given its consent, without any terms or conditions.

**133.**—(1) Insofar as the construction of the OCGT authorised development is or may be undertaken concurrently with the Able authorised development, the undertaker must—

(a) co-operate with Able with a view to ensuring—

(i) the co-ordination of construction programming and the carrying out of works; and

(ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker and Able and their respective contractors; and

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

### **Arbitration**

**134.** Any difference or dispute arising between the undertaker and Able under this Part of this Schedule will, unless otherwise agreed in writing between the undertaker and Able, be referred to and settled by arbitration in accordance with Article 42 (Arbitration).

## **PART 9**

### **FOR THE PROTECTION OF TOTAL LINDSEY OIL REFINERY LIMITED**

**135.** For the protection of Total Lindsey Oil Refinery Limited, the following provisions, unless otherwise agreed in writing between the undertaker and Total Lindsey Oil Refinery Limited, have effect.

**136.** In this Part of this Schedule—

“the pipelines” means the pipelines crossing the Order limits owned and operated by TLOR used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of “pipe-line”) of the Pipe-lines Act 1962; and

“TLOR” means Total Lindsey Oil Refinery Limited (company number 00564599).

**137.** Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the pipelines and access to them, the undertaker must submit to TLOR plans and sections of the proposed works and such further particulars as TLOR may, within 28 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

**138.** No works comprising any part of the authorised development which would have an effect on the operation, maintenance or abandonment of the pipelines and access to them are to be commenced



until plans and sections in respect of those works submitted under paragraph 137 have been approved by TLOR.

**139.** Any approval of TLOR required under paragraph 138 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as TLOR may require to be made for—

- (a) the continuing safety and operational viability of the pipelines; and
- (b) the requirement for TLOR to have uninterrupted and unimpeded access to the pipelines at all times.

## PART 10

### FOR THE PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED

**140.** The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail.

**141.** In this Part of this Schedule—

“Network Rail” means Network Rail Infrastructure Limited (company registration number 02904587) whose registered office is at 1 Eversholt Street, London NW1 2DN 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 (meaning of “subsidiary” etc) 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;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993(46)) or station lease; and

“railway property” means 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 for the purposes of such railway or works, apparatus or equipment.

**142.—(1)** The undertaker must not exercise the powers conferred by—

- (a) article 18 (compulsory acquisition of land);
- (b) article 19 (power to override easements and other rights);
- (c) article 21 (compulsory acquisition of rights etc.);
- (d) article 22 (private rights);
- (e) article 24 (acquisition of subsoil only);
- (f) article 27 (temporary use of land for carrying out the authorised development);
- (g) article 28 (temporary use of land for maintaining the authorised development,

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

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(46) 1993 c.43.

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(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 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of electronic communications code operators: preliminary notices) of the 1990 Act, or article 29 (statutory undertakers), 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 any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld or delayed but may be given subject to reasonable conditions and such consent 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.

**143.** Any difference or dispute arising between the undertaker and Network Rail under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Network Rail, be determined by arbitration in accordance with article 42 (arbitration).

**144.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

## PART 11

### FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS UNDERTAKER

#### Application

**145.** For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

#### Interpretation

**146.** In this Part of this Schedule—

“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker and/or its contractor(s) to a level as may be approved by Cadent in writing or in the case of dispute in accordance with the terms and level of cover determined by an expert under paragraph 158. Such insurance shall be maintained for the maintenance period of any specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an “acceptable credit provider”, such policy shall include (but without limitation)—

- (a) Cadent as a Co-Insured;
- (b) a cross liabilities clause; and
- (c) contractors’ pollution liability for third party property damage and third party bodily
- (d) damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of gas distribution together with any replacement apparatus and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“Cadent” means Cadent Gas Limited and/or its successors in title and/or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the mitigation measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent’s approval a ground mitigation scheme;

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

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

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

“maintenance activity” means the diversion, replacement, relaying, removal, refurbishment, reconstruction or improvement of the high pressure gas pipeline which supplies gas to the authorised development by the undertaker, or any works which would include the breaking of the ground within 15 metres in any direction of any apparatus;

“maintenance period” means the period of time from the commencement of the maintenance activity to the completion of the maintenance activity;

“Order land” has the same meaning as is given to the term “Order land” in article 2 of this Order;

“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;

“rights” shall include rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

“specified works” means any intrusive activities undertaken by the undertaker within the Order land pursuant to the powers in article 19 (Power to override easements and other rights), article 21 (Compulsory acquisition of rights etc.), article 22 (Private rights) and article 29 (Statutory undertakers) which—

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- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 150(2) or otherwise;
  - (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 150(2) or otherwise; and/or
  - (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (Cadent's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of Cadent High pressure Gas pipelines and associated installation requirements for third parties GD/SP/SSW/22"); and
- "undertaker" means the undertaker as defined in article 2 of this Order.

### **On Street Apparatus**

147.—(1) Except for paragraphs 148 (apparatus of Cadent in stopped up streets), 150 (removal of apparatus) in so far as sub-paragraph (2) applies, 151 (facilities and rights for alternative apparatus) in so far as sub-paragraph (2) below applies, 152 (retained apparatus: protection of Cadent), 153 (expenses) and 154 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Cadent, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraph 150 and 151 of this Schedule shall apply to diversions even where carried out under the 1991 Act, in circumstances where any Apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

(3) Notwithstanding article 30 (apparatus and rights of statutory undertakers in streets) or any other powers in the Order generally, section 85 of the 1991 Act in relation to cost sharing and the regulations made thereunder shall not apply in relation to any diversion of apparatus of Cadent under the 1991 Act.

### **Apparatus of Cadent in stopped up streets**

148.—(1) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 11 (temporary prohibition or restriction of uses of streets), Cadent will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as it would have been entitled to do immediately before such temporary stopping up or diversion in respect of any apparatus which at the time of the stopping up or diversion was in that highway.

(2) The protective provisions in this Part of this Schedule apply and take precedence over article 30 (apparatus and rights of statutory undertakers in streets) of the Order which shall not apply to Cadent.

### **Acquisition of land**

149.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the specified works (or in such other timeframe as may be agreed between Cadent and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of Cadent and/or affects the provisions of any enactment or agreement regulating the relations between Cadent

and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and the undertaker must use its reasonable endeavours 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 specified works.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and/or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by Cadent under paragraph 152 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

**150.**—(1) If, in the exercise of the agreement reached in accordance with paragraph 149 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the rights and facilities referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account paragraph 152(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent may, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to do so.

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

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraphs (2) or (3) have been afforded to Cadent to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

### **Facilities and rights for alternative apparatus**

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under 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 Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in Cadent's opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 158 (Arbitration) of this Part of this Schedule and the arbitrator shall make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection of Cadent**

**152.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

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

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

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and

(b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, Cadent may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance with all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.

(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.

(8) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 145 to 147 and 150 to 151 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 150(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with—

- (a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (11) at all times.

(11) At all times when carrying out any specified works the undertaker must comply with Cadent's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of Cadent High pressure Gas pipelines and associated installation requirements for third parties SPGD/SP /SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to any specified works the undertaker shall implement an appropriate ground mitigation scheme save that Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 153.

## **Expenses**

**153.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand all charges, costs and expenses reasonably anticipated or incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or rights or the construction of any new or alternative apparatus which may be required in consequence of the execution of any specified works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;

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- (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 150(3) if it elects to do so; and/or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Cadent;
  - (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
  - (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
  - (d) the approval of plans;
  - (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
  - (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any specified works;
  - (g) any watching brief pursuant to paragraph 152(6).
- (2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.
- (3) If in accordance with the provisions of this Part of this Schedule—
- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
  - (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,
- and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.
- (4) For the purposes of sub-paragraph (3)—
- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
  - (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

## Indemnity

**154.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of any specified works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the specified works by or



on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such specified 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 specified works) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

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

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and
- (b) any specified works carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (consent to transfer benefit of order) subject to the proviso that once such works become apparatus (“new apparatus”), any specified works yet to be executed and not falling within this sub-section (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 154.

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

(5) Cadent 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 Cadent must provide an explanation of how the claim has been minimised.

(6) The undertaker must not commence any maintenance activity (and must not permit the commencement of such maintenance activity) unless and until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker or its contractor has procured acceptable insurance (and provided evidence to Cadent that it shall maintain such acceptable insurance for the maintenance period) and Cadent has confirmed the same in writing to the undertaker.

(7) In the event that the undertaker fails to comply with sub-paragraph (6), nothing in this Part of this Schedule shall prevent Cadent from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

(8) The undertaker is not required to comply with sub-paragraph (6) where it needs to carry out emergency works as defined in the 1991 Act.

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### **Enactments and agreements**

**155.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

**156.—(1)** Where in consequence of the specified works, the undertaker or Cadent requires the removal of apparatus under paragraph 150(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 152, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the specified works and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

### **Access**

**157.** If in consequence of the agreement reached in accordance with paragraph 149(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**158.** Any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 42 (arbitration).

### **Notices**

**159.** The plans submitted to Cadent by the undertaker pursuant to paragraph 152(1) must be sent to Cadent Gas Limited Plant Protection at [plantprotection@cadentgas.com](mailto:plantprotection@cadentgas.com) or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker.

## **PART 12**

### **FOR THE PROTECTION OF HIGHWAYS ENGLAND COMPANY LIMITED**

### **Application**

**160.** For the protection of Highways England Company Limited (Company No. 04346363) as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Highways England.

## Interpretation

### 161. In this Part of this Schedule—

“the contractor” means any contractor or sub-contractor appointed by the undertaker to construct the HE works;

“the detailed design information” means details of the following where applicable to the HE works—

- (a) site clearance details;
- (b) boundary and mitigation fencing;
- (c) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting and supporting drainage calculations;
- (e) earthworks including supporting geotechnical assessments and any required strengthened earthworks appraisal form certification;
- (f) kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets) and supporting lighting calculations;
- (j) electrical work for road lighting, traffic signs and signals;
- (k) highway structures and any required structural approval in principle;
- (l) landscaping;
- (m) proposed departures from DMRB requirements;
- (n) utilities diversions;
- (o) topographical survey;
- (p) site waste management plan;
- (q) maintenance and repair strategy in accordance with Designing for Maintenance Interim Advice Note 69/15 or any replacement or modification of it;
- (r) asbestos survey;
- (s) regime of core testing and sampling of existing trunk road pavement construction;
- (t) site investigation survey;
- (u) health and safety information; and
- (v) other such information used to inform the detailed design of the HE works that may be required by Highways England;

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

“the estimated costs” means the estimated costs in respect of any HE works agreed pursuant to paragraph 164 of this Part of this Schedule;

“the Existing Gas Pipeline” means the existing gas pipeline the location of which is shown shaded blue within the Order Land but outside the Order Limits as shown on sheets the Land Plans;

“the HE works” means any works carried out by the undertaker on the strategic road network for to maintain, alter, inspect, repair, renew, replace, decommission or remove in whole or in part the Existing Gas Pipeline;

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“Highways England” means the Highways England Company Limited with company number 04346363 and whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ;

“the nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during construction of the HE works, as notified to Highways England from time to time;

“the programme of works” means a document setting out the sequence and timetabling of the HE works; and

“utilities” means any pipes, wires, cables or other equipment belonging to any person or body having power or consent to undertake street works under the 1991 Act.

### **Prior approvals**

**162.**—(1) The HE works must not commence until—

- (a) the detailed design of the HE works comprising of the following details has been submitted to and approved by Highways England—
  - (i) the detailed design information;
  - (ii) the programme of works;
  - (iii) details of proposed road space bookings;
  - (iv) a scheme of traffic management; and
  - (v) the identity of the contractor and nominated persons;
- (b) all necessary temporary traffic regulation measures have been made by the undertaker under article 11(1) or 14(3), or all necessary temporary traffic regulation orders have been made by Highways England;
- (c) at least 28 days’ notice of the commencement date of the HE works has been given to Highways England in writing, unless otherwise agreed by Highways England.

(2) Highways England must use its best endeavours to notify the undertaker of its approval or, as the case may be, of its disapproval and the grounds of disapproval, within 42 days of the information required by sub-paragraphs (1)(a)(i) to (1)(a)(v) being received by Highways England. Highways England must give reasons for any disapproval and shall not unreasonably delay its approval to the undertaker.

(3) In the event of any disapproval, the undertaker may re-submit the information required by sub-paragraphs (1)(a)(i) to (1)(a)(v) with modifications and Highways England must use its best endeavours to notify the undertaker of its approval or, as the case may be, of its disapproval and the grounds of disapproval, within 42 days of the revised detailed design information being received by Highways England. Highways England must give reasons for any further disapproval and must not unreasonably withhold or delay consent.

(4) The documents and programmes approved under sub-paragraphs (1) and (2) may be subsequently amended by agreement between the undertaker and Highways England from time to time, both parties acting reasonably and without delay.

(5) Within 28 days of receipt of a written request by the undertaker and in any event prior to the commencement of the HE works, Highways England must inform the undertaker of the identity of the person who will act as the point of contact on behalf of Highways England for consideration of the information required under sub-paragraph (1).

### **Construction of the HE works**

**163.**—(1) The HE works must be constructed to the satisfaction of Highways England acting reasonably and in accordance (where relevant) with—

- (a) the information approved under paragraph 162(1) or as subsequently varied by agreement between the undertaker and Highways England;
- (b) the DMRB and the Specification for Highway Works (contained within the Manual of Contract Documents for Highway Works) together with all other relevant standards as required by Highways England (to include all relevant interim advice notes, the Traffic Signs Manual 2008 and any amendment to or replacement of such standards for the time being in force), save to the extent that exceptions to those standards apply which have been approved by Highways England under paragraph 162(1) in respect of the HE works;
- (c) the Traffic Signs Regulations and General Directions 2016 or any amendment to or replacement of them; and
- (d) all aspects of the Construction (Design and Management) Regulations 2015 or any amendment to or replacement of them.

(2) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by Highways England (whose identity must have been previously notified to the undertaker and the contractor by Highways England) to gain access to the HE works for the purposes of inspection and supervision of the HE works.

(3) The undertaker must permit and must require the contractor to act upon any reasonable request made by Highways England in relation to the construction of the HE works as soon as reasonably practicable provided such a request is not inconsistent with and does not fall outside the contractor's obligations under its contract with the undertaker or the undertaker's obligations under this Order.

(4) If any part of the HE works is constructed otherwise than in accordance with the requirements of this Part of this Schedule, Highways England may by notice in writing require the undertaker, at the undertaker's own expense, to comply with the requirements of this Part of this Schedule.

(5) If within 28 days of the date on which a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to take the steps required by that notice. Highways England may carry out works to reinstate the highway and other land and premises of Highways England, and Highways England may recover from the undertaker any expenditure reasonably incurred by it in so doing.

(6) If during construction of the HE works the undertaker causes any damage to the strategic road network then Highways England may by notice in writing require the undertaker, at the undertaker's own expense, to remedy the damage.

(7) If within 28 days of the date on which a notice under sub-paragraph (6) is served on the undertaker, the undertaker has failed to take steps to comply with the notice. Highways England may carry out the steps required of the undertaker and may recover from the undertaker any expenditure reasonably incurred by Highways England in so doing.

(8) Nothing in this Part of this Schedule prevents Highways England from carrying out any work or taking such action as it reasonably believes to be necessary as a result of the construction of the HE works without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and Highways England may recover from the undertaker any reasonable expenditure incurred by Highways England in so doing.

(9) In constructing the HE works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the reasonable satisfaction of Highways England.

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## Payments

**164.**—(1) The undertaker must fund the full cost of the HE works and any incidental and amended works approved under this Part of this Schedule and must also pay to Highways England in respect of the HE works a sum equal to the whole of any costs and expenses which Highways England reasonably incurs (including costs and expenses for using internal or external staff) in relation to—

- (a) the checking and approval of the information required by paragraph 162(1)(a);
- (b) the supervision of the HE works;
- (c) all legal and administrative costs in relation to sub-paragraphs (a) and (b) above;
- (d) any costs incurred by Highways England in undertaking any necessary statutory procedure required as a result of construction of the HE works, and in preparing and bringing into force any traffic regulation order necessary to construct or implement the HE works, provided that this paragraph will not apply to the making of any orders which duplicate traffic regulation measures contained in, or which may be made by the undertaker under, this Order; and
- (e) any value added tax which is payable by Highways England in respect of the costs incurred pursuant to paragraphs (a) to (e) which Highways England cannot otherwise recover from HM Revenue and Customs,

sub-paragraphs (a) to (e) together comprising “the estimated costs”.

(2) The undertaker and Highways England must, acting reasonably, agree a schedule of the estimated costs prior to the commencement of the HE works and once that schedule is agreed the undertaker must pay to Highways England the estimated costs in line with the agreed schedule.

(3) Highways England is not entitled to costs or expenses incurred under any limb of sub-paragraph (1) if those costs or expenses are included as part of the estimated costs under any other limb of that sub-paragraph.

## Indemnity

**165.**—(1) Subject to sub-paragraphs (2) and (3) the undertaker must in relation to the construction of the HE works indemnify Highways England from and against all costs, expenses, damages, losses and liabilities arising from any claim, demand, action or proceedings resulting from damage caused by the construction of the HE works.

(2) Sub-paragraph (1) does not apply if the costs, expenses, damages, losses and liabilities were caused by or arise out of the act, neglect or default of Highways England or its officers, servants, agents, contractors or any person or body for whom it is responsible.

(3) In no circumstances is the undertaker liable to Highways England under this Part of this Schedule for any indirect or consequential loss or loss of profits.

(4) If any person makes a claim or notifies an intention to make a claim against Highways England which may reasonably be considered likely to give rise to a liability under this paragraph then Highways England must—

- (a) as soon as reasonably practicable give the undertaker reasonable notice of any such third party claim or demand, specifying the nature of the indemnity liability in reasonable detail;
- (b) not make any admission of liability, agreement or compromise in relation to the indemnity liability without first consulting the undertaker and considering their representations.

(5) The undertaker acknowledges that Highways England may receive statutory compensation claims and that Highways England may not be able to comply with sub-paragraph (4) above in respect of such claims.

(6) Where Highways England considers that sub-paragraph (5) applies to any claim or demand it must give notice of that view as part of the relevant notice provided pursuant to sub-paragraph (4)(a) above.

(7) Highways England 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 where it is within Highways England's reasonable gift and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of Highways England's control. If reasonably requested to do so by the undertaker, Highways England must provide an explanation of how any claim has been mitigated or minimised or where mitigation or minimisation is not possible an explanation as to why.

### **Arbitration**

**166.** Any difference or dispute arising between the undertaker and Highways England under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Highways England, be determined by arbitration in accordance with article 42 (arbitration).

### **Notices**

**167.** A notice or other document required to be served on Highways England under this Part of the Schedule must be served by post to Antony Firth, Head of Planning and Development, Operations, Yorkshire and the North East Region, Highways England, Lateral, 8 City Walk, Leeds, LS11 9AT or such other postal address which Highways England may from time to time notify to the undertaker.

## **PART 13**

### **FOR THE PROTECTION OF NORTHERN POWERGRID (YORKSHIRE) PLC**

**168.** For the protection of Northern Powergrid the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

**169.** In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by Northern Powergrid;

“functions” includes powers and duties;

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

“Northern Powergrid” means Northern Powergrid (Yorkshire) Plc (company number 04112320) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF.

**170.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Northern Powergrid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

**171.** Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary prohibition or restriction of use of streets), Northern Powergrid is at entitled at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable

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to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

**172.** 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.

**173.—(1)** If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Northern Powergrid's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided by virtue of an easement for a tenure no less than exists to the apparatus being relocated or diverted, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (7).

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable and at the cost of the undertaker (subject to prior approval by the undertaker of its estimate of costs of doing so) use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with paragraph 185.

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with paragraph 185, and after the grant to Northern Powergrid of any such facilities and rights as are referred to in sub-paragraph (2) or (3) proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to Northern Powergrid 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 Northern Powergrid, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Northern Powergrid.

(7) Nothing in sub-paragraph (6) authorises the undertaker to place, install, bed, pack, remove, connect or disconnect any apparatus, or any fill around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.



**174.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with paragraph 185.

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

**175.**—(1) Not less than 90 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 173(2), the undertaker must submit to Northern Powergrid 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 Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 168 to 174 apply as if the removal of the apparatus had been required by the undertaker under paragraph 173(2).

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

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid notice as soon as is reasonably practicable and subsequently a plan, section and description of those works as soon as reasonably practicable and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

**176.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid the reasonable expenses incurred by Northern Powergrid—

- (a) in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 173(2); and
- (b) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all,

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provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 173(2) having first decommissioned such apparatus.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal and, if the apparatus removed under the provisions of this Part of this Schedule has no value, no sum is to be deducted from the amount payable under sub-paragraph (1).

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

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 185 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Northern Powergrid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type capacity or dimensions of apparatus or to lay it at the same depth as the existing apparatus being replaced in which case the full costs are to be borne by the undertaker.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 173(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Northern Powergrid in respect of works by virtue of sub-paragraph (1) is to be reduced by the amount which represents that benefit if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on Northern Powergrid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course.

**177.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 173(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Northern Powergrid for any other expenses, loss, damages, penalty or costs incurred by Northern Powergrid,

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 Northern Powergrid, its officers, servants, contractors or agents.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**178.** Nothing in this Part of this Schedule affects any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

**179.**—(1) Without prejudice to the generality of this Part of this Schedule, Northern Powergrid must from time to time submit to the undertaker estimates of reasonable costs and expenses it expects to incur in relation to the implementation of any diversions or relocation of apparatus contemplated under this Part of this Schedule including without limitation—

- (a) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker under paragraph 176;
- (b) costs incurred in fulfilling its obligations in paragraph 173(3);
- (c) fees incurred in settling and completing and registering any documentation to secure rights for its diverted or relocated apparatus; and
- (d) costs and expenses of contractors required to undertake any works for which Northern Powergrid is responsible and of purchasing the necessary cabling and associated apparatus,

provided that Northern Powergrid must use reasonable endeavours to minimise to a proper and reasonable level any charges, costs, fees and expenses to the extent that they are incurred.

**180.** Northern Powergrid and the undertaker must use their reasonable endeavours to agree the amount of any estimates submitted by Northern Powergrid under paragraph 179 within 15 working days following receipt of such estimates by the undertaker. The undertaker must confirm whether it agrees to the amount of such estimates in writing and must not unreasonably withhold or delay such agreement. If the parties are unable to agree the amount of an estimate, the dispute must be dealt with in accordance with paragraph 185.

**181.** Work in relation to which an estimate is submitted must not be commenced by Northern Powergrid until that estimate is agreed with the undertaker in writing and a purchase order up to the value of the approved estimate has been issued by the undertaker to Northern Powergrid and an easement for the routes of the apparatus has been granted to Northern Powergrid under paragraph 173(1) for the benefit of its statutory undertaking.

**182.** If Northern Powergrid at any time becomes aware that an estimate agreed is likely to be exceeded, it must forthwith notify the undertaker and must submit a revised estimate of the relevant costs and expenses to the undertaker for agreement.

**183.** Northern Powergrid may from time to time, and at least monthly, from the date of this Order issue to the undertaker invoices for costs and expenses incurred up to the date of the relevant invoice, for the amount of the relevant estimate agreed. Invoices issued to the undertaker for payment must—

- (a) specify the approved purchase order number; and
- (b) be supported by timesheets and narratives that demonstrate that the work invoiced has been completed in accordance with the agreed estimate.

**184.** The undertaker is not responsible for meeting costs or expenses in excess of an agreed estimate, other than where agreed under paragraph 181 or determined in accordance with paragraph 185.

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**185.** Any difference under the provisions of this Part of this Schedule, unless otherwise provided for, is to 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) by an independent electrical engineer by or on behalf of the President for the time being of the Institute of Engineering and Technology.

## PART 14

### FOR THE PROTECTION OF HORNSEA 1 LIMITED

**186.** For the protection of Hornsea 1 referred to in this Part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and Hornsea 1, have effect.

#### **Interpretation**

**187.** In this Part of this Schedule—

“Hornsea 1” means Hornsea 1 Limited (registered number 07640868) and in substitution therefor their successors to Hornsea 1 Limited’s interests and/or the Hornsea 1 apparatus;

“Hornsea 1 apparatus” means any conduit cables ducts pipes or other apparatus or equipment belonging to or maintained by Hornsea 1 for the purposes of the transmission of electricity and includes any structure in which such apparatus is lodged and where such apparatus is or is to be maintained within plots 59, 60, 61, 62, 63, 64, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 90, 91, and 92;

“Hornsea 1 Limited’s interests” means any interest or right held by Hornsea 1 or which Hornsea 1 has the right or power to obtain within plots 59, 60, 61, 62, 63, 64, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 90, 91, and 92;

“in” in a context referring to rights, interests or apparatus in land includes a reference to under, over, across, along or upon such 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 and assess the works to be executed;

“protected area” means the area within 20 metres in all directions of each point from the Hornsea 1 apparatus or Hornsea 1 interests; and

“works” means any future works undertaken by or on behalf of the undertaker to install, maintain, alter, inspect, repair, renew, decommission or remove in whole or in part land or apparatus in the protected area.

#### **Acquisition of land**

**188.** Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire or take temporary possession of any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or cables of Hornsea 1 other than by agreement, such agreement not to be unreasonably withheld.

#### **Protection of Hornsea 1 from works**

**189.**—(1) Before any works are commenced the undertaker must submit to Hornsea 1 plans and sections of the proposed works and such further particulars as Hornsea 1 may, within 14 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

(2) The undertaker must not commence any works to which sub-paragraph (1) applies until Hornsea 1 has given written approval of the plan so submitted.

(3) Any approval of Hornsea 1 required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions; and
- (b) must not be unreasonably withheld.

### **Costs**

**190.**—(1) The undertaker must repay to Hornsea 1 all reasonable fees, costs, charges and expenses properly and reasonably incurred by them in relation to these protective provisions, in respect of—

- (a) the consideration and approval of the works under paragraph 189; and
- (b) the attendance of a representative of Hornsea 1 during the undertaking of any works in the protected area.

(2) Hornsea 1 must provide the undertaker with such estimates of and evidence in relation to any fees, costs, charges or expenses to which sub-paragraph (1) does or may apply as the undertaker may reasonably request.

(3) The undertaker will indemnify and keep Hornsea 1 indemnified against all reasonable costs, charges, damages, expenses, loss, demands, proceedings, claims or penalty which may be reasonably incurred by Hornsea 1—

- (a) by reason of the works or the failure of them; and/or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the works.

(4) Hornsea 1 must give the undertaker reasonable notice of any claim or demand under sub-paragraph (3) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

### **Access**

**191.** If in consequence of the powers granted under this Order the access to any Hornsea 1 apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable Hornsea 1 to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Expert determination**

**192.**—(1) Except as provided in sub-paragraph (7), article 42 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

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- (5) The expert must—
- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert’s appointment;
  - (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
  - (c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b); and
  - (d) give reasons for the decision.
- (6) The expert must consider where relevant—
- (a) the development outcome sought by the undertaker;
  - (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
  - (c) the nature of the power sought to be exercised by the undertaker;
  - (d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;
  - (e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner, while giving consideration to any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations;
  - (f) the effects of the undertaker’s proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;
  - (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;
  - (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
  - (i) the constructability notes; and
  - (j) any other important and relevant consideration.
- (7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42.

## PART 15

### FOR THE PROTECTION OF HORNSEA 2 COMPANIES

#### **Application**

**193.** For the protection of Hornsea 2 referred to in this Part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and Hornsea 2, have effect.

#### **Interpretation**

**194.** In this Part of this Schedule—

“Hornsea 2” means Optimus Wind Limited (registered number 07883284), Breesea Limited (registered number 07883217), Sonningmay Wind Limited (registered number 10722635) and

Soundmark Wind Limited (registered number 10721881) and in substitution therefor their successors to Hornsea 2's interests and/or the Hornsea 2 apparatus;

"Hornsea 2 apparatus" means any conduit cables ducts pipes or other apparatus or equipment belonging to or maintained by Hornsea 2 for the purposes of the transmission of electricity and includes any structure in which such apparatus is lodged and where such apparatus is or is to be maintained within plots 59, 60, 61, 62, 63, 64, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 90, 91, and 92;

"Hornsea 2's interests" means any interest or right held by Hornsea 2 or which Hornsea 2 has the right or power to obtain within plots 59, 60, 61, 62, 63, 64, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 90, 91, and 92;

"in" in a context referring to rights, interests or apparatus in land includes a reference to under, over, across, along or upon such 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 and assess the works to be executed;

"protected area" means the area within 20 metres in all directions of each point from the Hornsea 2 apparatus or Hornsea 2 interests; and

"works" means any future works undertaken by or on behalf of the undertaker to install, maintain, alter, inspect, repair, renew, decommission or remove in whole or in part land or apparatus in the protected area.

### **Acquisition of land**

**195.** Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire or take temporary possession of any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or cables of Hornsea 2 other than by agreement, such agreement not to be unreasonably withheld.

### **Protection of Hornsea 2 from works**

**196.**—(1) Before any works are commenced the undertaker must submit to Hornsea 2 plans and sections of the proposed works and such further particulars as Hornsea 2 may, within 14 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

(2) The undertaker must not commence any works to which sub-paragraph (1) applies until Hornsea 2 has given written approval of the plan so submitted.

(3) Any approval of Hornsea 2 required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions; and,
- (b) must not be unreasonably withheld.

### **Costs**

**197.**—(1) The undertaker must repay to Hornsea 2 all reasonable fees, costs, charges and expenses properly and reasonably incurred by them in relation to these protective provisions, in respect of—

- (a) the consideration and approval of the works under paragraph 196; and
- (b) the attendance of a representative of Hornsea 2 during the undertaking of any works in the protected area.

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(2) Hornsea 2 must provide the undertaker with such estimates of and evidence in relation to any fees, costs, charges or expenses to which sub-paragraph (1) does or may apply as the undertaker may reasonably request.

(3) The undertaker will indemnify and keep Hornsea 2 indemnified against all reasonable costs, charges, damages, expenses, loss, demands, proceedings, claims or penalty which may be reasonably incurred by Hornsea 2—

- (a) by reason of the works or the failure of them; and/or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the works.

(4) Hornsea 2 must give the undertaker reasonable notice of any claim or demand under sub-paragraph (3) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

### **Access**

**198.** If in consequence of the powers granted under this Order the access to any Hornsea 2 apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable Hornsea 2 to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Expert determination**

**199.**—(1) Except as provided in sub-paragraph (7), article 42 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;



- (d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;
  - (e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner, while giving consideration to any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations;
  - (f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;
  - (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;
  - (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
  - (i) the constructability notes; and
  - (j) any other important and relevant consideration.
- (7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42.

## SCHEDULE 10

Article 38

### PROCEDURE FOR DISCHARGE OF REQUIREMENTS

**1. In this Schedule—**

“business day” means a day other than a Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971<sup>(47)</sup>;

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

“start date” means the date of the notification given by the Secretary of State under paragraph 5(2)(b).

#### **Applications made under requirement**

**2.—(1)** Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement the relevant planning authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with the later of—

- (a) the day immediately following that on which the application is received by the authority; or
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3,

or such longer period as may be agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to paragraph 5, in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to

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<sup>(47)</sup> 1971 c.80.

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be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(4) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1)—

- (a) and is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement,

then the application is deemed to have been refused by the relevant planning authority at the end of that period.

#### **Further information and consultation**

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

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 14 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within five business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within five business days of receipt of such a request and in any event within 21 days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

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

#### **Fees**

4.—(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee prescribed under regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(48) (as may be amended or replaced from time to time) is to apply and must be paid to the relevant planning authority for each application.

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

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(48) [S.I. 2012/2920](#) .

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within nine weeks from the relevant date in paragraph 1 unless—
  - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
  - (ii) a longer period of time for determining the application has been agreed pursuant to paragraph 2 of this Schedule.

## Appeals

- 5.—(1) The undertaker may appeal in the event that—
- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;
  - (b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(3);
  - (c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
  - (d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.
- (2) The steps to be followed in the appeal process are as follows—
- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultee;
  - (b) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person’s attention should be sent;
  - (c) the relevant planning authority and the requirement consultee (if applicable) must submit written representations to the appointed person in respect of the appeal within ten business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
  - (d) the appeal parties must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to paragraph (c);
  - (e) the appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d); and
  - (f) the appointment of the person pursuant to paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.
- (3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal the appointed person must, within five business days of the appointed person’s appointment, notify the appeal parties in writing specifying the further information required.
- (4) Any further information required pursuant to sub-paragraph (3) must be provided by the undertaker to the appointed person, the relevant planning authority and the requirement consultee on the date specified by the appointed person (the “specified date”), and the appointed person must

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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 specified date, but otherwise the process and time limits set out in paragraphs (c) to (e) of sub-paragraph (2) apply.

(5) The appointed person may—

(a) allow or dismiss the appeal; or

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

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

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

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

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

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

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

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the advice on planning appeals and award costs published on 3 March 2014 by what was then the Department for Communities and Local Government or any circular or guidance which may from time to time replace it.

## SCHEDULE 11

Article 39

### DOCUMENTS AND PLANS TO BE CERTIFIED

**Table 8**

<i>(1)</i> <i>Document name</i>	<i>(2)</i> <i>Document reference</i>	<i>(3)</i> <i>Revision number</i>	<i>(4)</i> <i>Date</i>
access and rights of way plans	4.4	4 (sheets 1, 2 and 3) 5 (key plan and sheet 4)	1 November 2019
book of reference	3.5	4	1 November 2019
commitments register	6.4.32	1	April 2019

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<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Document name</i>	<i>Document reference</i>	<i>Revision number</i>	<i>Date</i>
environmental statement	Volume 1, 6.2 Volume 2, 6.3 Volume 3, 6.4	1 1 1	April 2019
flood risk assessment	6.4.26	1	April 2019
framework biodiversity enhancement and management plan	6.4.17	1	April 2019
framework construction environmental management plan	6.4.3	1	April 2019
framework construction traffic management plan	6.4.7	1	April 2019
framework construction worker travel plan	6.4.6	1	April 2019
framework written scheme of investigation	6.4.31	2	October 2019
indicative lighting strategy	5.6	1	April 2019
land plans	4.2	1 (sheets 1, 2 and 3) 2 (key plan and sheet 4)	1 November 2019 (key plan and sheet 4) 27 March 2019 (sheets 1 and 3) 28 March 2019 (sheet 2)
works plans	4.3	1	April 2019
statement to inform appropriate assessment	7.17	2	October 2019

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## SCHEDULE 12

Schedule 2, Requirement 5

## DESIGN PARAMETERS

**Table 9**

<i>(1)</i> <i>Building or structure</i>	<i>(2)</i> <i>Maximum length (metres)</i>	<i>(3)</i> <i>Maximum width (metres)</i>	<i>(4)</i> <i>Maximum height (metres above 0 meters above ordnance datum)</i>	<i>(5)</i> <i>Maximum diameter (metres)</i>
Single gas turbine and generator	30	20	20	
Gas turbine building	46	25	29	
Exhaust stack			56	12
Air intakes	24	16	40	
Fin-fan cooler	30	15	17	
Control room, workshops, stores	35	20	16	
Demineralised tank, firewater tank			32	24

## SCHEDULE 13

Article 41

MODIFICATIONS TO THE ABLE MARINE ENERGY  
PARK DEVELOPMENT CONSENT ORDER 2014

**Schedule 9 to the Able Marine Energy Park Development Consent Order 2014**

1. After paragraph 120 of Schedule 9 insert new Part 16—

**“PART 16****FOR THE PROTECTION OF VPI IMMINGHAM B LIMITED****Application**

**121.** For the protection of VPI Immingham B Limited (Company No. 10630563) as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and VPI.

## **Interpretation**

**122.** In this Part of this Schedule—

“the OCGT authorised development” means the development authorised by the OCGT Order;

“the OCGT Order” means the Immingham Open Cycle Gas Turbine Order 2020;

“the OCGT Order land” has the same meaning as the term “Order land” in article 2(1) of the OCGT Order;

“the OCGT water connection” means that part of work number 2 of the OCGT authorised development which is to be carried out within plots 6 and 7 of the OCGT Order land;

“VPI” means VPI Immingham B Limited (Company No. 10630563) whose registered office is at 4th Floor, Nova South, 160 Victoria Street, London SW1E 5LB, or any person having the benefit of the OCGT Order pursuant to article 6 and/or 7 of it;

“the Order” means this Order; and

“the respective authorised developments” means the developments authorised by the Order and the OCGT Order respectively.

## **Regulation of powers over Rosper Road**

**123.**—(1) Subject to VPI complying with paragraphs 59, 60, 61 and 64 of Part 8 of Schedule 9 to the OCGT Order the undertaker must not exercise the powers granted under this Order so as to hinder or prevent—

- (a) the construction, operation, use or maintenance of the OCGT water connection; or
- (b) access between all parts of the OCGT authorised development and Rosper Road,

otherwise than with the prior written consent of VPI.

(2) Wherever in this Schedule provision is made with respect to the approval or consent of VPI, that approval or consent must be in writing (and subject to such reasonable terms and conditions as VPI may require), but must not be unreasonably withheld or delayed.

(3) In the event that VPI does not respond in writing to a request for approval or consent within 28 days of receipt of such a request, VPI is deemed to have given its consent, without any terms or conditions.

**124.**—(1) The undertaker must not exercise the powers under any of the articles of the Order specified in sub-paragraph (2) over or in respect of the OCGT Order land otherwise than with the prior written consent of VPI.

(2) The articles referred to in sub-paragraph (1) are—

- (a) article 15 (street works);
- (b) article 16 (temporary stopping up of streets);
- (c) article 17 (access to works);
- (d) article 22 (authority to survey and investigate land);
- (e) article 30 (compulsory acquisition of land);
- (f) article 31 (power to override easements and other rights);
- (g) article 34 (compulsory acquisition of rights etc.);
- (h) article 35 (private rights of way);
- (i) article 39 (rights under or over streets);
- (j) article 40 (temporary use of land for carrying out the authorised development);

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- (k) article 41 (temporary use of land for maintaining authorised development); and
- (l) article 42 (statutory undertakers).

(3) In the event that VPI withholds its consent pursuant to sub-paragraph (1) it must notify the undertaker in writing of the reasons for withholding such consent and (if applicable) the time period during which such consent will be withheld.

**125.** Insofar as the construction of the OCGT authorised development is or may be undertaken concurrently with the Able authorised development, the undertaker must—

- (a) co-operate with VPI with a view to ensuring—
  - (i) the co-ordination of construction programming and the carrying out of works; and
  - (ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker and VPI and their respective contractors; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

#### **Arbitration**

**126.** Any difference or dispute arising between the undertaker and VPI under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and VPI, be referred to and settled by arbitration in accordance with Article 57 (arbitration).”

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### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises VPI Immingham B Limited (referred to in this Order as the undertaker) to construct, operate and maintain a gas fired electricity generating station. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 39 (certification of plans etc.) of this Order may be inspected free of charge during working hours at VPI Immingham Power Station, Rosper Road, South Killingholme, Lincolnshire, DN40 3DZ.