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STATUTORY INSTRUMENTS

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**2016 No. 297**

**INFRASTRUCTURE PLANNING**

**The Thorpe Marsh Gas Pipeline Order 2016**

*Made* - - - - - *3rd March 2016*

*Coming into force* - - - - - *25th March 2016*

An application has been made to the Secretary of State for an order granting development consent under section 37 of the Planning Act 2008(1) (the “2008 Act”), and in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(2), for an order under sections 114, 115 and 120 of the 2008 Act.

The application has been examined by a single appointed person (appointed by the Secretary of State) who having considered the representations made and not withdrawn and the accompanying documents has submitted a report to the Secretary of State under section 83(1) of the 2008 Act.

The Secretary of State has considered the report and recommendation of the single appointed person, has taken into consideration the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(3) and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application with modifications that in the opinion of the Secretary of State do not make any substantial change to the proposals.

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 paragraph 5 of Schedule 13 to, the Localism Act 2011 ([c.20](#)). Section 83(1) was amended by paragraph 35 of that Schedule. Section 114 was amended by paragraph 55 of Schedule 13 to the Localism Act 2011. Section 120 was amended by section 140 of, and paragraph 60 of Schedule 13 to, that Act.

(2) [S.I. 2009/2264](#) as amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012 ([S.I. 2012/635](#)) and the Infrastructure Planning (Prescribed Consultees and Interested Parties etc) (Amendment) Regulations 2013 ([S.I. 2013/522](#)). There are other amendments to the Regulations which are not relevant to this Order.

(3) [S.I. 2009/2263](#); regulation 3 was amended by S.I.s [2012/635](#) and [2012/787](#).

## PART 1

### Preliminary

#### Citation and commencement

1. This Order may be cited as the Thorpe Marsh Gas Pipeline Order 2016 and comes into force on 25th March 2016.

#### Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(4);

“the 1965 Act” means the Compulsory Purchase Act 1965(5);

“the 1980 Act” means the Highways Act 1980(6);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(7);

“the 1990 Act” means the Town and Country Planning Act 1990(8);

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- (4) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.
- (5) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.
- (6) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22). Sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51). Section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29). Sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1), (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37). Section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177. Section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51). Section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (7) 1981 c.66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c.17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c.50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c.28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c.51). There are amendments to the 1981 Act which are not relevant to this Order.
- (8) 1990 c.8. Section 56(4) was amended by section 32 of, and paragraph 10(2) of Schedule 7 to, the Planning and Compensation Act 1991 (c.34). Section 106 was substituted, and section 106A inserted, by section 12(1) of the Planning and Compensation Act 1991. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the 2008 Act. Sections 272 to 274 and section 279 were amended by section 406(1) of, and paragraph 103 of Schedule 17 to, the Communications Act 2003 (c.21), and section 280 was amended by section 406(1) of, and paragraph 104 of Schedule 17. to, that Act. Sections 272 to 274 were also amended by S.I. 2011/741 and S.I. 2012/2590. Section 282 was amended by S.I. 2009/1307. There are other amendments to the 1990 Act which are not relevant to this Order.

“the 1991 Act” means the New Roads and Street Works Act 1991<sup>(9)</sup>;

“the 1997 Regulations” means the Hedgerows Regulations 1997<sup>(10)</sup>;

“the 2008 Act” means the Planning Act 2008;

“AGI” means Above Ground Installation;

“AGI plan” means the plan certified as the AGI plan by the Secretary of State for the purposes of this Order;

“AGI site” means the land coloured green on sheet 2 of the works plan and shown on the AGI plan and comprising Works No. 5, 6 and 7;

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

“book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

“commence” means to carry out within the Order limits any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised development, other than operations consisting of the removal, diversion and laying of services, and “commencement” is to be construed accordingly;

“Crown land plan” means the plan certified as the Crown land plan by the Secretary of State for the purposes of this Order;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

“flood risk assessment addendum” means the document certified as the flood risk assessment addendum by the Secretary of State for the purposes of this Order;

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

“Highways England” means Highways England Company Limited (company registration number 9346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ or its successor from time to time as the strategic highways company for England;

“historic environment plan” means the plan certified as the historic environment plan by the Secretary of State for the purposes of this Order;

“important hedgerows plan” means the plan certified as the important hedgerows plan by the Secretary of State for the purposes of this Order;

“land plans” means the plans certified as the land plan by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 6 (limits of deviation);

“maintain” includes, to the extent assessed in the environmental statement, to inspect, maintain, adjust, alter, repair, test, cleanse, re-lay, divert, make safe, decommission, reconstruct, demolish, abandon, replace, remove and improve the authorised development or any part of it; and any derivative of “maintain” shall be construed accordingly;

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<sup>(9)</sup> 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

<sup>(10)</sup> S.I. 1997/1160. There are amendments to the Regulations which are not relevant to this Order.

“National Grid Gas” means National Grid Gas plc (company registration no. 02006000) or any successor company performing the same function;

“nature conservation plan” means the plan certified as the nature conservation plan by the Secretary of State for the purposes of this Order;

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

“Order limits” means the limits shown on the works plan within which the authorised development may be carried out;

“outline construction environmental management plan” means the document certified as the outline construction environmental management plan by the Secretary of State for the purposes of this Order;

“outline construction traffic management plan” means the document certified as the outline construction traffic management plan by the Secretary of State for the purposes of this Order;

“outline public rights of way plan” means the document certified as the outline public rights of way plan by the Secretary of State for the purposes of this Order;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981<sup>(11)</sup>;

“pipe dump plan” means the plan certified as the pipe dump plan by the Secretary of State for the purposes of this Order;

“pipeline works” means Works No. 9, 10, 11, 13, 14, 15, 19, 20, 23, 24, 26, 27, 28, 31, 33, 34, 35, 38, 39, 40, 41, 43, 44, 45, 47, 48, 49, 50, 51, 53, 55, 57, 58, 59, 60, 62, 63, 64, 65, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 83, 84, 85, 87, 89, 90, 91, 92, 94, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 107, 109, 110, 111, 113, 114, 115, 118, 119, 121, 122 and 123 as described in Part 1 of Schedule 1 (authorised development);

“public rights of way plan” means the plan certified as the public rights of way plan by the Secretary of State for the purposes of this Order;

“relevant highway authority” means Doncaster Metropolitan Borough Council, East Riding of Yorkshire Council or North Yorkshire County Council, as appropriate, for the area in which the relevant highway to which the relevant provision of this Order applies is situated, or any successors to their statutory functions and, in the case of trunk roads, means the Secretary of State for Transport;

“relevant local authority” means Doncaster Metropolitan Borough Council, East Riding of Yorkshire Council or North Yorkshire County Council, as appropriate, for the area in which the land to which the relevant provision of this Order applies is situated or any successors to their statutory functions or any joint committee they choose to establish pursuant to section 102 and 106 of the Local Government Act 1972<sup>(12)</sup>;

“relevant planning authority” means Doncaster Metropolitan Borough Council, East Riding of Yorkshire Council or Selby District Council, as appropriate, for the area in which the land to which the relevant provision of this Order applies is situated or any successors to their statutory functions;

“Requirements” means those matters set out in Part 2 of Schedule 1 (Requirements);

“runway 07/25” means the runway identified as runway 07/25 on the runway plan;

“runway plan” means the plan certified as the runway plan by the Secretary of State for the purposes of this Order;

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(11) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34).

(12) 1972 c.70.

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

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“temporary compounds” means Works No. 1, 3, 8, 16, 18, 21, 22, 25, 29, 32, 36, 42, 52, 56, 61, 66, 82, 88, 93, 106, 108, 112, 116 and 120 as described in Part 1 of Schedule 1 (authorised development);

“Thorpe Marsh Power Limited” means Thorpe Marsh Power Limited (company registration number 06637894) whose registered office is at Carlton House, 4 Ellerbeck Way, Stokesley Business Park, Stokesley, North Yorkshire TS9 5JZ;

“tree preservation order” has the meaning given in section 198 of the 1990 Act;

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

“undertaker” means Thorpe Marsh Power Limited (company registration number 06637894);

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“working width” means the land coloured blue and yellow and labelled “working width” on the works plan;

“works plan” means the plan certified as the works plan by the Secretary of State for the purposes of this Order.

(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 air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are to be taken to be measured along that work.

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

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

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

## PART 2

### Principal powers

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

**3.** Subject to the provisions of this Order and to the Requirements in Part 2 of Schedule 1, the undertaker is granted development consent for the authorised development in Part 1 of Schedule 1 to be carried out within the Order limits, and Schedule 1 has effect for that purpose.

## PART 3

### Operations

#### **Operation and use of the authorised development**

4. The undertaker may at any time operate and use the authorised development except to the extent that this Order or an agreement made under this Order provides otherwise.

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

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

(2) Paragraph (1) does not authorise diversion of the authorised development—

- (a) outside the limits of deviation;
- (b) which would result in the authorised development varying from the description in Schedule 1; or
- (c) not assessed in the environmental statement.

#### **Limits of deviation**

6. In carrying out or maintaining the authorised development the undertaker may—

- (a) deviate the pipeline works laterally from the lines or situations of the authorised development shown on the works plans within the extent of the limits of deviation shown on those plans;
- (b) with the exception of Works No. 83, 84, 122 and 123, deviate the pipeline works vertically upwards to a limit of not less than 1.2 metres below the surface of the ground (except where ground conditions make compliance with this upwards limit impracticable in which case the upwards limit is 0.7 metres below the surface of the ground);
- (c) with the exception of Work No. 57, deviate the pipeline works to any extent downwards as may be found to be necessary to a maximum depth of 20 metres below the surface of the ground;
- (d) deviate Works No. 5, 6 or 7 vertically only to the maximum extent assessed in the environmental statement.

#### **Benefit of Order**

7. Subject to article 8 (consent to transfer benefit of Order), the provisions of this Order are to have effect solely for the benefit of the undertaker.

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

8.—(1) Except where paragraph (4) applies, in which case no such consent is required, the undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of provisions of this Order and such related statutory rights as may be agreed 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 and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1)(a) or (b), 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) or (4) 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) This paragraph applies to a transfer to National Grid Gas of any part of the benefit of provisions of this Order, and those obligations and liabilities, and any related statutory rights which relate to, or any which may be necessary or expedient for or ancillary to, the construction, operation, maintenance and diversion of Work No. 5 by National Grid Gas.

### **Application and modification of the 1997 Regulations**

9. Regulation 6(1) of the 1997 Regulations is modified so as to read for the purposes of this Order only as if there were inserted after sub-paragraph (j) the following—

“; or

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

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

10.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(13)</sup> (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

(a) relates to premises used by the undertaker for the purposes of or in connection with the construction 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 site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974<sup>(14)</sup>; or

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

(2) Section 61(9) (consent for work on construction site to include a statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do 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.

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

11.—(1) Where an application is made to the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain for any consent, agreement or approval

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<sup>(13)</sup> 1990 c.43. Section 82(1) was amended by paragraph 6 of Schedule 17 to the Environment Act 1995 (c.25).

<sup>(14)</sup> 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c.43).

required or contemplated by any of the provisions of this Order, such consent, agreement or approval must, if given, be given in writing and must not be unreasonably withheld.

(2) In relation to all agreements or approvals granted, refused or withheld in relation to Requirements, the following provisions apply so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission as if the relevant Requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(3) For the purposes of paragraph (2) a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

(4) For the purposes of the application of section 262 of the 1990 Act (meaning of “statutory undertaker”) to appeals pursuant to this article, the undertaker is deemed to be a holder of a licence under section 6 of the Electricity Act 1989.

(5) Nothing in paragraph (2)(b) affects the application of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

## PART 4

### Streets

#### Street works

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

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place 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), (b), (c) and (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) The provisions of sections 54 (advance notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any street works carried out under paragraph (1) and, in relation to the M62, reasonable conditions may be imposed by Highways England pursuant to Schedule 3 of the 1991 Act, provided that—

- (a) section 61(1) of the 1991 Act (under which the consent of the street authority is required for the placing of apparatus in a protected street) does not apply to the placing of apparatus in the course of the authorised development;



- (b) section 62(2) of the 1991 Act (power following the designation of a protected street to require removal or repositioning of apparatus already placed in the street) does not, unless otherwise agreed between the street authority and the undertaker, apply in relation to apparatus placed in the course of the authorised development; and
- (c) section 62(4) of the 1991 Act (power to give directions with respect to works in progress where a designation as a protected street commences or ceases) does not, unless otherwise agreed between the street authority and the undertaker, apply in relation to the authorised development.

(4) In this article “apparatus” and “street works” have the same meanings as in Part 3 of the 1991 Act save that “apparatus” further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks and electricity cabinets.

### **Temporary stopping up of streets**

**13.**—(1) Subject to paragraphs (3) and (4), the undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street within the Order limits and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street; and
- (b) prevent all persons from passing along that street.

(2) Without prejudice to paragraph (1), the undertaker may use any street temporarily stopped up under the powers conferred by this article 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 stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) The undertaker must not temporarily stop up, alter or divert any street without the consent of the street authority which may attach reasonable conditions to any consent.

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

### **Temporary stopping up of public rights of way**

**14.** The undertaker may, in connection with the carrying out of the authorised development, temporarily stop up, alter or divert each of the public rights of way specified in column (2) of Schedule 3 (public rights of way to be temporarily stopped up) to the extent specified in column (3), by reference to the public rights of way plan.

### **Access to works**

**15.** The undertaker may, for the purposes of the authorised development, form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 4 (access to works).

### **Agreements with street authorities**

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

- (a) any temporary stopping up, alteration or diversion of a street authorised by this Order;
- (b) the carrying out in or under the street of any of the works referred to in article 12(1) (street works).

(2) Such agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

## PART 5

### Supplemental powers

#### Discharge of water

17.—(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.

(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 of the Water Industry Act 1991(15) (right to communicate with public sewers).

(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 such approval must not be unreasonably withheld; and
  - (b) where that person has been given the opportunity to supervise the making of the opening.

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

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension; but nothing in this Order requires the undertaker to maintain a watercourse or public sewer or drain.

(7) This article does not authorise a groundwater activity or a water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2010(16).

- (8) In this article—
- (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker; and
  - (b) other expressions, excluding watercourse, used both in this article and in Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in those Regulations.

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(15) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37), and amended by section 32 of, and paragraph 16(2) of Schedule 3 to, the Flood and Water Management Act 2010 (date in force to be appointed see section 49(3)(h)(i)). There are other amendments to this section which are not relevant to this Order.

(16) S.I. 2010/675. “Groundwater activity” is defined in paragraph 3 of Schedule 22. “Water discharge activity” is defined in paragraph 3 of Schedule 21.

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

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

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes, trial pits and boreholes 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, trial pits or boreholes.

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

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

- (a) must, if so required, before entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes, trial pits or boreholes.

(4) No trial holes, trial pits or boreholes may be made under this article—

- (a) in land located within the highway boundary without the consent of the relevant highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) As soon as reasonably practicable following the exercise of any powers under paragraph (1), any apparatus must be removed and the land restored to the reasonable satisfaction of the owners of the land.

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

### **Removal of human remains**

**19.**—(1) In this article “the specified land” means that land within the Order limits.

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

(3) Before any such remains are removed from the specified land, the undertaker must give notice of the intended removal, describing the specified 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 specified land.

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

(5) At any time within 56 days after the first publication of a notice under paragraph (3) 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.

(6) Where a person has given notice under paragraph (5), 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 (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must 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 must remove the remains and as to the payment of the costs of the application.

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

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land;
- (b) such notice is given and no application is made under paragraph (7) 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;
- (c) within 56 days after any order is made by the county court under paragraph (7) 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 (10) 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.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) 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.

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

- (a) send to the Registrar General a certificate of re-interment or cremation 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) send to the relevant local authority mentioned in paragraph (4) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9).

(12) 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.

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

(14) Section 25 of the Burial Act 1857<sup>(17)</sup> (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with this article.

## PART 6

### Powers of acquisition

#### Compulsory acquisition of land

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

(2) This article is subject to article 22 (time limit for exercise of authority to acquire land compulsorily), paragraph (2) of article 23 (compulsory acquisition of rights), article 26 (acquisition of subsoil only) and paragraph (9) of article 29 (temporary use of land for carrying out the authorised development).

(3) Nothing in this article authorises the acquisition of an interest which is for the time being held by or on behalf of the Crown.

#### Compulsory acquisition of land – incorporation of the mineral code

**21.**—(1) Parts 2 and 3 of Schedule 2 (minerals) to the 1981 Act, except for paragraph 8(3) of that Schedule, are incorporated in this Order subject to the modifications set out in paragraph (2).

(2) Omit “acquiring authority” wherever that expression occurs and substitute “undertaker” in each case.

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

**22.**—(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 may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the 1981 Act as applied by article 25 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 29 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), 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

**23.**—(1) The undertaker may acquire compulsorily such rights over the Order land, or impose restrictive covenants affecting the land, as may be required for any purpose for which that land may be acquired under article 20 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this article, article 24 (private rights), article 29 (temporary use of land for carrying out the authorised development), article 30 (temporary use of land for maintaining the authorised development) and article 31 (statutory undertakers), in the case of the Order land specified in column (1) of Schedule 5 (land in which new rights, etc. may be acquired)

the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights or the imposition of restrictive covenants affecting the land for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act, as substituted by paragraph 5 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires a right over land or the benefit of a restrictive covenant under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights) 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 under paragraph (1) 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 to the statutory undertaker in question the power to acquire such rights or impose such covenants except where paragraph (8) applies in which case no such consent is required.

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

(8) This paragraph applies to a transfer to National Grid Gas of the powers to acquire rights or impose restrictive covenants under paragraph (1) which relate to, or which may be necessary or expedient for or ancillary to, the construction, operation, maintenance and diversion of Work No. 5.

(9) Nothing in this article authorises the acquisition of rights over, or the imposition of restrictive covenants affecting, an interest which is for the time being held by or on behalf of the Crown.

### **Private rights**

**24.—**(1) Subject to the provisions of this article, all private rights 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) of the 1965 Act (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under this article (and including the land specified in column (1) of Schedule 5 (land in which new rights, etc. may be acquired)) are extinguished in so far as their continuance would be inconsistent with the exercise of the right acquired as the imposition of a restrictive covenant—

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

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights 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.

(4) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

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

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land,
- (ii) the undertaker's appropriation of 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 do not apply to any right specified in the notice; and

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

(7) If any such agreement as is referred to in paragraph (6)(b)—

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

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

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

(8) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

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

(2) The 1981 Act, as so applied, 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 3 (preliminary notices), for subsection (1) there is substituted—

“(1) Before making a declaration under section 4 with respect to any land or right over land which is subject to a compulsory purchase order, the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(5) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

(6) In that section, for subsections (5) and (6) there is substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(7) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

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

(9) References to the 1965 Act in the 1981 Act must be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land or rights over land under this Order.

#### **Acquisition of subsoil only**

**26.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 20 (compulsory acquisition of land) or article 23 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) Paragraph (2) does not prevent article 27 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

#### **Acquisition of part of certain properties**

**27.**—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 of the 2008 Act) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner must sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner is required to sell only the land subject to the notice to treat must, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—



- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner must sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; and
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, the undertaker must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

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

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

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

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

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

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

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

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

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

- (a) enter on and take temporary possession of—
  - (i) the land specified in column (1) of Part A (land of which temporary possession may be taken) of Schedule 7 for the purposes specified in relation to that land in column (2) of that Schedule;
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct any works, temporary works (including the provision of means of access), security fencing, structures and buildings on that land;
- (d) use the land for the purposes of a construction working site with access to the construction working site in connection with the authorised development; and
- (e) construct or carry out any works for the purposes of the authorised development, or use the land, or carry out any mitigation works or operations required by the relevant planning authority as a condition to discharging any of the Requirements in Part 2 of Schedule 1.

(2) The undertaker may, for the purpose of obtaining access to construct the authorised development—

- (a) make temporary use, in common with other persons enjoying rights over that land, of access routes over the land specified in column (1) of Part B (land over which temporary access may be taken where others use the same) of Schedule 7; and
- (b) carry out any necessary works to improve those access routes (and for that purpose only take temporary possession of the area in which the work is to be carried out for the duration of that work).

(3) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the relevant part of the authorised development unless the undertaker has, before the

end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(5) 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; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any works have been constructed under paragraph (1)(e), if the owners and occupiers consent to the works remaining; or
- (c) remove any ground-strengthening works which have been placed in that land to facilitate the construction of the authorised development.

(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 any power conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 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 may not compulsorily acquire under this Order the land referred to in paragraph (1) except that the undertaker is not precluded from—

- (a) acquiring new rights over or imposing restrictive covenants on any part of that land including the subsoil under article 23 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) on that land under article 26 (acquisition of subsoil only).

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

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 7.

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

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

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

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

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

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

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

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

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

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

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

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

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

(11) Where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment,

the requirement to serve not less than 28 days' notice under paragraph (3) does not apply and the undertaker may enter the land pursuant to paragraph (1) subject to giving such period of notice (if any) as is reasonably practicable in all the circumstances.

(12) In this article "the maintenance period" means, in relation to any part of the authorised development, the period of 5 years beginning with the date on which that part of the authorised development is first brought into operational use for the purpose for which it was designed.

### **Statutory undertakers**

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

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers as specified in column (1) of Schedule 5 (land in which new rights etc. may be acquired) as may be required for the purpose specified in relation to that land in column (2) of that Schedule;
- (b) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers within the Order land described in the book of reference;
- (c) extinguish the rights of, and remove or reposition the apparatus belonging to, statutory undertakers over or within the Order land; and

- (d) construct over existing apparatus belonging to statutory undertakers any necessary track or roadway (whether temporary or permanent) together with the right to maintain or remove the same, and install such service media under or over the existing apparatus needed in connection with the authorised development.

### **Recovery of costs of new connections**

**32.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 31 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 31 (statutory undertakers), any person who is—

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

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

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

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(18); and

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

## **PART 7**

### **Miscellaneous and general**

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

**33.**—(1) This article applies to—

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

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

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

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

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

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

34. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

### **Guarantees in respect of payment of compensation**

35.—(1) The undertaker must not begin to exercise the powers of compulsory acquisition set out in articles 20 to 32 in relation to any land unless it has first put in place either—

- (a) a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security for that purpose which has been approved by the Secretary of State.

(2) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor 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.

(3) The guarantee or alternative form of security must be in place for a maximum of 15 years from the date that the relevant power of this Order is exercised.

### **No double recovery**

36. Compensation is not payable in respect of the same matter both under this Order and any other enactment, any contract, any rule of law or under two or more different provisions of this Order.

### **Felling or lopping of trees and removal of hedgerows**

37.—(1) Save for any trees subject to tree preservation orders which are dealt with pursuant to article 38 (trees subject to tree preservation orders), the undertaker may fell, lop or prune any tree or shrub within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub 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 from constituting a danger to persons constructing, maintaining, operating or using the authorised development.

(2) In carrying out any activity authorised by paragraph (1) or (4), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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

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

- (a) remove any hedgerows (other than important hedgerows) within the Order limits that may be required for the purposes of the carrying out of the authorised development; and
  - (b) remove the important hedgerows as are within the Order limits and specified in Schedule 8 (removal of important hedgerows) and identified on the important hedgerows plan.
- (5) In this article “hedgerow” and “important hedgerow” have the same meaning as in the 1997 Regulations.

### **Trees subject to tree preservation orders**

**38.**—(1) The undertaker may fell, lop or prune any tree within the Order limits subject to a tree preservation order which was made after 18th November 2014, or cut back its roots, if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

- (2) In carrying out any activity authorised by paragraph (1)—
  - (a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and
  - (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) does not apply.
- (3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.
- (4) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

### **Crown rights**

**39.**—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the undertaker or any lessee or licensee—

- (a) to enter upon, use and carry out the authorised development on or in any manner interfere with any land or rights of whatsoever description—
    - (i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
    - (ii) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
    - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that Government Department; or
  - (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).
- (2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and is deemed to have been given in writing where it is sent electronically.

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

**40.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the AGI plan;
- (b) the book of reference;
- (c) the Crown land plan;
- (d) the environmental statement;
- (e) the flood risk assessment addendum;
- (f) the historic environment plan;
- (g) the important hedgerows plan;
- (h) the land plans;
- (i) the nature conservation plan;
- (j) the outline construction environmental management plan;
- (k) the outline construction traffic management plan;
- (l) the outline public rights of way plan;
- (m) the pipe dump plan;
- (n) the public rights of way plan;
- (o) the runway plan; and
- (p) the works plan,

for certification that they are true copies of the documents referred to in this Order.

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

#### **Protection of interests**

41. Schedule 9 (protective provisions) has effect.

#### **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.

Signed by authority of the Secretary of State for Energy and Climate Change

*Giles Scott*  
Head of National Infrastructure Consents and  
Coal Liabilities  
Department of Energy and Climate Change

3rd March 2016



## SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

#### PART 1

##### Authorised Development

*The authorised development is a nationally significant infrastructure project as defined in sections 14 and 21 of the 2008 Act comprising the construction of an up to 24 inch (609.6 millimetre) external diameter cross-country gas pipeline (to be known as the Thorpe Marsh Gas Pipeline) for the conveyance of gas and covering a distance of approximately 19.1 kilometres starting from the National Transmission System approximately 1.5 kilometres west of Camblesforth in the District of Selby in the County of North Yorkshire and ending at the proposed Thorpe Marsh Power Station to be constructed at Barnby Dun in the Metropolitan Borough of Doncaster. It includes the laying, placing, use, inspection, maintenance and diversion of the Thorpe Marsh Gas Pipeline and the works numbered and described below—*

##### **In the County of North Yorkshire, District of Selby**

*Work No. 1 – A temporary compound comprising an approximate area of 20,180 square metres housing a temporary site office and temporary welfare facilities;*

*Work No. 2 – A temporary vehicular access running in a generally southerly direction from Common Lane to Work No. 1 and Work No. 3 and visibility splay and along Footpaths 35.14/5/1 and 35.14/6/2;*

*Work No. 3 – A temporary compound comprising an approximate area of 14,045 square metres housing temporary stores/workshops and a temporary pipe dump;*

*Work No. 4 – A new permanent vehicular access road of up to 4 metres in width and 75 metres in length together with mains power and telecommunication cables and a landscaping strip laid in a north to south direction from the southern side of Sandwith Lane to Work No. 5, Work No. 6 and Work No. 7;*

*Work No. 5 – A permanent secure compound housing equipment for the monitoring and control of gas (comprising an approximate area of 522 square metres and all with a maximum height of 3.2 metres except Work No. 5(j) with a maximum height of 4.0 metres) as shown indicatively on the AGI plan to be sited within the AGI site. Works to be carried out as part of Work No. 5 include—*

- (a) security fencing and incidental security boundary treatment;*
- (b) double entrance gate (with an approximate width of 5.0 metres);*
- (c) single personnel gate (with an approximate width of 1.5 metres);*
- (d) installation of a control kiosk (with an approximate width and length of 3.0 metres) containing instrumentation, security and electrical equipment;*
- (e) lighting attached to the control kiosk;*
- (f) installation of above or below ground pipework;*
- (g) installation of an above or below ground isolation joint;*
- (h) installation of an above or below ground remote operating valve with gas actuation;*
- (i) installation of above or below ground line valves and a double block and bleed valve;*
- (j) installation of an above ground pole with satellite dish; and*
- (k) changes to ground levels as may be necessary including the provision of drainage works and the laying of hard standing;*

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*Work No. 6* – A permanent secure compound housing equipment for the monitoring and control of gas (comprising an approximate area of 833 square metres) as shown indicatively on the AGI plan to be sited within the AGI site. Works to be carried out as part of Work No. 6 include—

- (a) security mesh fencing topped with razor wire (with an approximate maximum height of 3.2 metres);
- (b) double entrance gate (with an approximate width of 5.0 metres and an approximate maximum height of 3.0 metres);
- (c) single personnel gate (with an approximate width of 1.5 metres and an approximate maximum height of 2.1 metres);
- (d) installation of a control kiosk (with an approximate length of 6.0 metres, width of 4 metres and a maximum height of 2.5 metres) containing instrumentation, security and electrical equipment;
- (e) lighting attached to the control kiosk;
- (f) lighting situated on six lighting columns (with an approximate maximum height of 4.0 metres);
- (g) closed circuit television cameras situated on three columns (with an approximate height of 4.0 metres);
- (h) installation of below ground pipework;
- (i) installation of above ground pipework (with an approximate maximum height of 1.5 metres);
- (j) installation of emergency shutdown valves with gas actuation (with an approximate maximum height of 2.5 metres);
- (k) installation of line valves and double block and bleed valves (with an approximate maximum height of 2.0 metres);
- (l) installation of a pigging facility (with an approximate maximum height of 2.0 metres);
- (m) internal access roadway with an approximate length of 30.0 metres and width of 4.0 metres; and
- (n) changes to ground levels as may be necessary including the provision of drainage works and the laying of hard standing;

*Work No. 7* – Facilities for the benefit of Work No. 5 and Work No. 6 including access roadway, car parking and hard standing, perimeter landscaping and the planting of trees and shrubs, mains power and telecommunication cables (suspended from a wooden pole with a maximum height of 6.0 metres), freestanding electrical meter cabinet and transformer unit serving Work No. 5 and Work No. 6;

*Work No. 8* – Facilities for the benefit of Work No. 5 and Work No. 6 including a new temporary compound for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities, use as an additional working area and for the benefit of Work No. 9 to provide a temporary access;

*Work No. 9* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 7 and Work No. 8 to Work No. 10;

*Work No. 10* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 9 to Work No. 11 and crossing under the track known as Race Lane;

*Work No. 11* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 10 to Work No. 13;

*Work No. 12* – A temporary construction access to the west of Work No. 11;

*Work No. 13* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 11 to Work No. 14 and crossing under the track known as Bull Alley Lane;

*Work No. 14* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 13 to Work No. 15;

*Work No. 15* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-easterly direction from Work No. 14 to Work No. 19 and passing under the Knottingley to Drax Power Station railway line;

*Work No. 16* – A new temporary compound for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

*Work No. 17* – A temporary construction access to the west of Work No. 16;

*Work No. 18* – A new temporary compound for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

*Work No. 19* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 15 to Work No. 20;

*Work No. 20* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 19 to Work No. 23 and crossing under Hirst Road and the Trans Pennine Trail;

*Work No. 21* – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

*Work No. 22* – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

*Work No. 23* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 20 to Work No. 24;

#### **In both the County of North Yorkshire, District of Selby and the East Riding of Yorkshire**

*Work No. 24* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 23 to Work No. 26 and passing under the River Aire and Gowdall Footpath No. 7;

*Work No. 25* – Temporary compounds for the storage of excavated material;

#### **In the East Riding of Yorkshire**

*Work No. 26* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 24 to Work No. 27;

*Work No. 27* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 26 to Work No. 28 and crossing under an unnamed drainage ditch;

*Work No. 28* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 27 to Work No. 31;

*Work No. 29* – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

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- Work No. 30* – A temporary construction access from Low Road to Work No. 29;
- Work No. 31* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 29 to Work No. 33 and crossing under Low Road and the Trans Pennine Trail and passing under the Pontefract railway line;
- Work No. 32* – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;
- Work No. 33* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-easterly direction from Work No. 31 to Work No. 34;
- Work No. 34* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-easterly direction from Work No. 33 to Work No. 35 and crossing under Gowdall Footpath No. 1 (Dorr Lane);
- Work No. 35* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-easterly direction from Work No. 34 to Work No. 38;
- Work No. 36* – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;
- Work No. 37* – New temporary construction accesses and visibility splays from the A645 Pontefract Road to Works No. 36 and 38;
- Work No. 38* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-easterly direction from Work No. 35 to Work No. 39 and crossing under the A645 Pontefract Road;
- Work No. 39* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 38 to Work No. 40;
- Work No. 40* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 39 to Work No. 41 and crossing under Snaith and Cowick Footpath No. 22;
- Work No. 41* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 40 to Work No. 43;
- Work No. 42* – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;
- Work No. 43* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 41 to Work No. 44 and crossing under the M62 motorway;
- Work No. 44* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-easterly direction from Work No. 43 to Work No. 45;
- Work No. 45* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 44 to Work No. 47 and crossing under an unnamed track;
- Work No. 46* – A temporary construction access from Long Lane to Work No. 45;
- Work No. 47* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 45 to Work No. 48;
- Work No. 48* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 47 to Work No. 49 and crossing under Pollington Footpath No. 3;

*Work No. 49* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 48 to Work No. 50;

*Work No. 50* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 49 to Work No. 51 and crossing the Government Pipelines and Storage System oil pipeline;

*Work No. 51* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 50 to Work No. 53;

*Work No. 52* – A new temporary compound for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

*Work No. 53* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 51 to Work No. 55 and crossing under Snaith and Cowick Footpath No. 20 (Balne Croft Lane);

*Work No. 54* – A temporary construction access from Works No. 52 and 53;

*Work No. 55* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 53 to Work No. 57;

*Work No. 56* – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

*Work No. 57* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 55 to Work No. 58 and passing under the Aire and Calder Navigation Knottingley to Goole Canal and crossing under an unnamed drain and an unnamed road;

*Work No. 58* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 57 to Work No. 59;

*Work No. 59* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 58 to Work No. 60 and crossing under the Pollington Fleet Drain;

#### **In both the East Riding of Yorkshire and the County of North Yorkshire, District of Selby**

*Work No. 60* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 59 to Work No. 62;

#### **In the County of North Yorkshire, District of Selby**

*Work No. 61* – A new temporary compound for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

*Work No. 62* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally westerly direction from Work No. 60 to Work No. 63 and crossing under a disused railway;

*Work No. 63* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally westerly direction from Work No. 62 to Work No. 64;

*Work No. 64* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally westerly direction from Work No. 63 to Work No. 65 and crossing under Public Footpath 35.3/17/1 and the Trans Pennine Trail;

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*Work No. 65* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally westerly direction from Work No. 64 to Work No. 70;

*Work No. 66* – A new temporary compound for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities, use as an additional working area and for the welding of the pipe string required for Work No. 70;

*Work No. 67* – A temporary construction access from Balne Hall Farm (off Lowgate) to Works No. 65, 66 and 70;

*Work No. 68* – Works to facilitate a temporary construction access from Balne Hall Farm (off Lowgate) to Work No. 67;

*Work No. 69* – Works to facilitate construction access along Lowgate;

**In both the County of North Yorkshire, District of Selby and the Metropolitan Borough of Doncaster**

*Work No. 70* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 65 to Work No. 71 and crossing under Public Footpath 35.3/15/2 and passing under the River Went;

**In the Metropolitan Borough of Doncaster**

*Work No. 71* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 70 to Work No. 72;

*Work No. 72* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 71 to Work No. 73 and crossing under Fenwick Footpath No. 12 (Bunfold Shaw Lane);

*Work No. 73* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 72 to Work No. 74;

*Work No. 74* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 73 to Work No. 75 and crossing under Fenwick Footpath No. 10;

*Work No. 75* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 74 to Work No. 76;

*Work No. 76* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 75 to Work No. 77 and crossing under Fenwick Footpath No. 15;

*Work No. 77* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 75 to Work No. 78;

*Work No. 78* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 77 to Work No. 79 and crossing under Fenwick Footpath No. 14;

*Work No. 79* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 78 to Work No. 80;

*Work No. 80* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 79 to Work No. 81 and crossing under Moss Footpath No. 6;

*Work No. 81* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 80 to Work No. 85;

*Work No. 82* – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

*Work No. 83* – Cables laid underground from the high pressure gas pipeline at Work No. 81 to Work No. 84;

*Work No. 84* – One free-standing steel cabinet and one free-standing steel kiosk (each with an approximate maximum height of 1.5 metres) standing on a concrete base and surrounded by a post and rail fence and galvanised gate, with the cabinet to house an electricity meter and the kiosk to house a transformer rectifier, together with a permanent pedestrian access way from the edge of Moss Road to the cabinet and kiosk, also to accommodate a mains power cable;

*Work No. 85* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 81 to Work No. 87 and crossing under Moss Road;

*Work No. 86* – A temporary construction access and visibility splay from Moss Road to Works No. 81, 82, 85 and 87;

*Work No. 87* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 85 to Work No. 89;

*Work No. 88* – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

*Work No. 89* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 87 to Work No. 90 and crossing under Trumfleet Lane;

*Work No. 90* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 89 to Work No. 91;

*Work No. 91* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 90 to Work No. 92 and crossing under Moss Footpath No. 20;

*Work No. 92* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 91 to Work No. 94;

*Work No. 93* – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

*Work No. 94* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 92 to Work No. 96 and crossing under Wrancarr Lane and Wrancarr Drain;

*Work No. 95* – A temporary construction access and visibility splays from Wrancarr Lane to Works No. 93 and 94;

*Work No. 96* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 94 to Work No. 97;

*Work No. 97* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 96 to Work No. 98 and crossing under Moss Bridleway No. 22 (Old House Lane);

*Work No. 98* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 97 to Work No. 99;

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*Work No. 99* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 98 to Work No. 100 and crossing under Thorpe in Balne Footpath No. 3;

*Work No. 100* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 99 to Work No. 101;

*Work No. 101* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 100 to Work No. 102 and crossing under Thorpe in Balne Footpath No. 1;

*Work No. 102* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 101 to Work No. 103;

*Work No. 103* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 102 to Work No. 104 and crossing under Thorpe in Balne Bridleway No. 10 (Airey Lane);

*Work No. 104* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 103 to Work No. 105;

*Work No. 105* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally easterly direction from Work No. 104 to Work No. 107 and crossing under Bell Croft Lane and the Trans Pennine Trail;

*Work No. 106* – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

*Work No. 107* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally easterly direction from Work No. 105 to Work No. 109;

*Work No. 108* – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

*Work No. 109* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally easterly direction from Work No. 107 to Work No. 110 and crossing under Applehurst Lane;

*Work No. 110* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally easterly direction from Work No. 109 to Work No. 111;

*Work No. 111* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-easterly direction from Work No. 110 to Work No. 113 and crossing under a disused railway;

*Work No. 112* – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area and crossing Thorpe in Balne Footpath No. 2;

*Work No. 113* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally easterly direction from Work No. 111 to Work No. 114;

*Work No. 114* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally easterly direction from Work No. 113 to Work No. 115 and crossing under Thorpe in Balne Footpath No. 2, Thorpe in Balne Footpath No. 13 and Thorpe Marsh Drain;

*Work No. 115* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally easterly direction from Work No. 114 to Work No. 118;

*Work No. 116* – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;



*Work No. 117* – A temporary construction access to the north of Work No. 118 and running parallel to Thorpe in Balne 11 Bridleway;

*Work No. 118* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally easterly direction from Work No. 115 to Work No. 119 and crossing under Thorpe in Balne Bridleway No. 11;

*Work No. 119* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally easterly, then southerly direction from Work No. 118 to Work No. 121;

*Work No. 120* – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

*Work No. 121* – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 119 to the Thorpe Marsh Power Station site and passing under the railway line;

*Work No. 122* – Pipeline marking including—

- (a) aerial marker posts (with an approximate maximum height of 3.0 metres) set at intervals of approximately 2.0 kilometres (or closer where required);
- (b) marker posts (with an approximate maximum height of 1.0 metre) set at every road, rail, drain, watercourse, fence, wall and hedgerow crossing; and
- (c) any other marking required to comply with current or future legislation and regulations;

together with any other necessary works required in connection with the above;

*Work No. 123* – Cathodic protection test posts (with an approximate maximum height of 1.0 metre) with cables connected onto the pipeline and set at intervals of approximately 1.0 kilometre at locations in close proximity to road crossings.

In connection with Works No. 1 to 123, and to the extent that they do not otherwise form part of any such works, any further associated development (which fall within the scope of the environmental impact assessment recorded in the environmental statement) as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and comply with the Requirements.

## PART 2

### Requirements

#### Interpretation

##### 1. In this Part—

“European protected species” has the meaning given in Part 3 of the Conservation of Habitats and Species Regulations 2010<sup>(19)</sup>; and

“stage” means a defined section or part of the authorised development (including maintenance), the extent of which is shown in a scheme, submitted to and approved in writing by the relevant planning authority pursuant to Requirement 3 (stages of authorised development).

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<sup>(19)</sup> S.I. 2010/490. There are amendments to these Regulations which are not relevant to this Order. “European protected species” is defined in regulation 40(2).

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### **Time limits**

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

### **Stages of authorised development**

3. No authorised development must commence until a written scheme setting out all the stages of the authorised development has been submitted to and approved by the relevant planning authority.

### **Detailed design approval**

4.—(1) No stage of the authorised development below must commence until details of the layout, scale and external appearance of that stage have been submitted to and approved in writing by the relevant planning authority—

- (a) Work No. 4;
- (b) Work No. 5;
- (c) Work No. 6;
- (d) Work No. 7;
- (e) the detailed alignment of the pipeline works; and
- (f) the working width and temporary compounds.

(2) The works approved by the relevant planning authority under sub-paragraph (1) must be in accordance with the works plan (or relevant parts of the plan) and be within the Order limits.

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

### **Construction environmental management plan**

5.—(1) No stage of the authorised development must commence until a written construction environmental management plan for that stage, based upon the outline construction environmental management plan and the mitigation measures included in the environmental statement, has been submitted to and approved in writing by the relevant planning authority in consultation with the Environment Agency, any relevant Internal Drainage Boards and the Canal and River Trust.

(2) The construction environmental management plan must set out written details of—

- (a) relevant health, safety and environmental legislation and compliance;
- (b) local community liaison responsibilities;
- (c) any proposed temporary fences or other means of enclosure including any top or subsoil mounds in areas at high risk of flooding to be erected during the construction of that stage of the authorised development;
- (d) any temporary external lighting to be installed at any of the construction sites during the construction of that stage, including measures to manage and mitigate artificial light emissions and prevent light spillage and measures to ensure that any temporary lighting does not distract drivers on roads in the vicinity of the Order limits;
- (e) measures for the management of noise and vibration during the construction of that stage, to include details of noise attenuation measures to minimise noise resulting from the construction of the authorised development, including any noise limits, and a scheme for monitoring noise during the construction of the authorised development to ensure compliance with the noise limits and the effectiveness of the attenuation measures;
- (f) measures for the management and mitigation of dust emissions during the construction of the authorised development;

- (g) measures for the management, storage, handling and recycling of construction waste;
- (h) measures for the restoration and reinstatement of land within the Order limits which is used temporarily for construction and which is not incorporated in permanent works or approved landscaping;
- (i) measures for the management of water resources, including an assessment of the risks to controlled ground and surface waters and measures to mitigate such risks, including pollution incident control;
- (j) measures for the handling, placing, compaction and management of soil;
- (k) measures to allow plant to cross rivers, drains or any works within or around river or drain banks;
- (l) a flood plan for the construction of the authorised development;
- (m) measures to manage flood risk when drilling between defended and undefended areas;
- (n) the crossing methods to be employed at each crossing, including the means by which the environmental and structural effects of that method will be controlled;
- (o) measures for the management of construction vehicle movements around public footpaths within Burn airfield; and
- (p) measures to ensure the security of land within and accesses to the Order limits during the construction of the authorised development;

and any other matters the relevant planning authority reasonably requires.

(3) The measures set out in the construction environmental management plan for each stage must be implemented as approved.

### **Construction traffic and temporary highway accesses**

6.—(1) No stage of the authorised development must commence until a construction traffic management plan for that stage in accordance with the outline construction traffic management plan and the mitigation measures included in the environmental statement and containing details of construction traffic and temporary highway access arrangements has been submitted to and approved in writing by the relevant planning authority in consultation with the relevant highway authority.

- (2) The construction traffic management plan for each stage must set out written details of—
  - (a) construction vehicle routing;
  - (b) site accesses;
  - (c) the management of junctions to, and crossings of, the public highway and other public rights of way;
  - (d) the scheduling and timing of movements, in particular the details of abnormal load movements;
  - (e) temporary warning signs;
  - (f) the marking and identification of construction vehicles;
  - (g) a workforce travel plan; and
  - (h) access routes along the highway network to construction compounds.
- (3) The construction traffic management plan for each stage must be implemented as approved.

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### **Construction hours**

7.—(1) Subject to sub-paragraph (2), construction work must not take place other than between 0700 hours and 1900 hours Monday to Friday, 0700 hours and 1300 hours on Saturdays, with no activity on Sundays or bank holidays.

- (2) Work outside of the days or times in sub-paragraph (1) may take place only if—
- (a) it is associated with the hydrostatic pressure testing of the pipeline constructed as part of the authorised development;
  - (b) it is associated with the horizontal directional drilling of crossings in the locations assessed in the environmental statement;
  - (c) it is associated with an emergency; or
  - (d) it is carried out with the prior written approval of the relevant planning authority.

### **Lighting management measures at the AGI site**

8.—(1) The construction of the AGI site must not commence until written details of the permanent external lighting to be installed at the AGI site, measures to prevent light spillage and measures to regulate the times at which the permanent external lighting may operate have been submitted to and approved in writing by the relevant planning authority.

- (2) The authorised development must be operated in accordance with the approved details.

### **Provision of landscaping at the AGI site**

9.—(1) The construction of the AGI site must not commence until a written landscaping scheme in relation to those works has been submitted to and approved in writing by the relevant planning authority. The landscaping scheme must include details of all proposed hard and soft landscaping works, including—

- (a) cultivation, importing of materials and other operations to ensure plant establishment;
- (b) proposed finished ground levels;
- (c) hard surfacing materials;
- (d) vehicular and pedestrian access, parking and circulation areas;
- (e) minor structures such as furniture, refuse or other storage units, signs and lighting;
- (f) proposed and existing functional services above and below ground including drainage, power and communications cables and pipelines, manholes and supports;
- (g) details of existing trees to be retained with measures for their protection during the construction period;
- (h) implementation timetables for all landscaping works; and
- (i) future maintenance regimes.

(2) All landscaping works must be carried out in accordance with the landscaping scheme and the implementation timetables approved under sub-paragraph (1).

### **AGI site and highway accesses**

10.—(1) The construction of the AGI site must not commence until written details of the siting, design and layout of the permanent means of access to Sandwith Lane to be used by vehicular traffic at the AGI site has, after consultation with the relevant highway authority, been submitted to and approved in writing by the relevant planning authority.

(2) The highway access to the AGI site must be constructed in accordance with the approved details.

### **Hedgerows and trees**

**11.**—(1) For any stage of the authorised development that would affect any hedgerow or tree, no construction of the authorised development must commence until (for that stage and in relation to the relevant works within that stage) a written plan for the management of the removal and (where appropriate) reinstatement of all hedgerows and trees (as applicable) has been approved in writing by the relevant planning authority in consultation with the relevant highway authority. The written plan must be consistent with and have regard to the ecological management plan to be approved pursuant to Requirement 16.

(2) The plan must identify hedgerows and trees (as applicable) where mitigation measures are to be applied and include a detailed reinstatement and after-care plan.

(3) The removal and reinstatement of the hedgerows and trees (as applicable) must be carried out in accordance with the plan.

(4) Any hedgerows and trees (as applicable) which are to be reinstated must be reinstated in the first planting season following the completion of construction.

(5) Any hedgerow or tree planting which is part of an approved reinstatement plan that, within a period of five years beginning with the date of planting, is removed, uprooted, destroyed, dies or (in the opinion of the relevant planning authority) becomes seriously damaged or defective, must be replaced in the first available planting season with planting material of the same specification as that originally planted.

### **Public rights of way**

**12.**—(1) No stage of the authorised development may commence that would affect any public right of way until, following consultation with the relevant highway authority, a written plan based upon the outline public rights of way plan for the temporary closure, diversion (where appropriate) and re-opening of the right of way has been submitted to and approved in writing by the relevant planning authority.

(2) The temporary closure, re-opening or diversion of the relevant right of way must be carried out in accordance with the approved plan.

### **Surface and foul water drainage**

**13.**—(1) No stage of the authorised development must commence until for that stage, written details of the surface and (if any) foul water drainage system (including means of pollution control) for both temporary and permanent works have, in accordance with the flood risk assessment included in the environmental statement and the flood risk assessment addendum, been submitted to and approved in writing by the relevant planning authority in consultation with the Environment Agency and the sewerage and drainage authority.

(2) The surface water drainage system for each stage must be constructed in accordance with the approved details.

(3) No discharge of water used under article 17 (discharge of water) must be made until details of the location and rate of discharge have been submitted to and approved in writing by the relevant planning authority in consultation with the Environment Agency and the sewerage and drainage authority.

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### **Contaminated land and groundwater**

14.—(1) No stage of the authorised development must commence until a written scheme applicable to that stage to deal with the contamination of any land (including groundwater) within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, after consultation with the Environment Agency, been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must include an intrusive geotechnical investigation and assessment report to identify the extent of any contamination and any remedial measures to be taken to render the land fit for its intended purpose.

(3) Should any remediation be identified as necessary in the investigation and assessment report, such remediation must be carried out in accordance with the approved scheme.

(4) If during the construction of the authorised development further contamination not previously identified is found to be present at the site, then no further work must be carried out on that part of the site until—

(a) a risk assessment has been carried out and the results of the risk assessment have been provided to the relevant planning authority; and

(b) such additional mitigation measures (if any) as may be identified by the risk assessment have been incorporated into the approved scheme.

(5) In this Requirement “controlled waters” has the meaning given in Part 3 of the Water Resources Act 1991(20).

### **Archaeology**

15.—(1) No stage of the authorised development must commence until for that stage a written scheme for the investigation of areas of archaeological interest as identified in the environmental statement has, after consultation with Doncaster Metropolitan Borough Council, East Riding of Yorkshire Council and their respective archaeological advisors or North Yorkshire County Council (as appropriate) and English Heritage, been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must identify areas where an agreed scheme of archaeological works is required and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found and must include an implementation timetable.

(3) Any archaeological works carried out under the scheme must be carried out by a suitably qualified person or body and approved by the relevant planning authority.

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

### **Ecological management plan**

16.—(1) No stage of the authorised development must commence until a written ecological management plan for that stage reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement, after consultation with Yorkshire Wildlife Trust and any relevant statutory body, has been submitted to and approved, in writing, by the relevant planning authority. The ecological management plan must be consistent with, and have regard to, the written management plan for hedgerows and trees to be approved pursuant to Requirement 11.

(2) The ecological management plan must include an implementation timetable and must be carried out as approved.

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(20) [1991 c.57](#).

(3) Any ecological works carried out under the ecological management plan must be carried out by a suitably qualified person or body and approved by the relevant planning authority.

(4) The undertaker must replace with equivalent works at the earliest practicable opportunity any ecological works carried out in accordance with the approved ecological management plan that, within a period of five years beginning with the date of the implementation of the plan, become seriously damaged, destroyed or defective or are removed.

### **European protected species**

**17.**—(1) No stage of the authorised development may commence until it has been established by existing or further survey work whether any European protected species is present on any of the land affected, or likely to be affected, by the authorised development.

(2) Where a European protected species is shown to be present, no authorised development of that stage may be begun until, after consultation with Natural England, a scheme of protection and mitigation measures has been submitted to and approved in writing by the relevant planning authority; and the authorised development must be carried out in accordance with the approved scheme.

### **Operational noise**

**18.**—(1) Operational noise from all fixed plant at the AGI site, measured at the façade of the nearest sensitive residential receptor, must be no higher than 26dB LAeq, 1 hr between the hours of 0700 and 2300 and no higher than 22dB LAeq, 15 mins between the hours of 2300 and 0700.

(2) A scheme of post-completion noise monitoring at the AGI site must be submitted to and agreed in writing with the relevant planning authority.

(3) The scheme of post-completion noise monitoring at the AGI site must be implemented as approved.

### **Decommissioning**

**19.**—(1) Upon the cessation of commercial operation of the authorised development, a written scheme for the decommissioning of the authorised development and the final proposed condition of the relevant land, including a proposed timetable for decommissioning, must be submitted to and approved in writing by the relevant planning authority, in consultation with the Health and Safety Executive or any successor to its statutory functions.

(2) The scheme for decommissioning must be implemented as approved.

### **Written approval**

**20.** Where under any of the above Requirements the written approval or agreement of the relevant planning authority or another person or authority is required, that approval or agreement must be given in writing.

### **Amendments to approved details**

**21.**—(1) With respect to any Requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority or another approval authority, the approved details must be carried out as approved unless an amendment or variation is previously agreed, by the relevant planning authority or that other approval authority as specified in the relevant Requirement, in accordance with sub-paragraph (2) and in consultation with any body specified in the relevant Requirement.

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(2) No amendments to or variations from the approved details may be approved if their likely significant effects on the environment are not assessed in the environmental statement, or have not been subject to such further assessment as the relevant planning authority or that other approval authority may require; provided that such approval must not be given except where it has been demonstrated that the subject-matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved (as identified in the environmental statement).

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

### **Flooding mitigation**

**22.**—(1) No stage of the authorised development must commence until for that stage there has been submitted to and approved in writing by (and deposited with) the relevant planning authority, in consultation with the Environment Agency and the relevant internal drainage board, a scheme for the mitigation of flood risk during the construction and operation of the authorised development prepared in accordance with the flood risk assessment included in the environmental statement, the flood risk assessment addendum and the outline construction environmental management plan.

(2) The approved scheme must be implemented fully and adhered to during the construction and operation of the relevant stage of the authorised development.

### **Local employment**

**23.**—(1) No stage of the authorised development may commence until for that stage a written scheme for the promotion of local employment opportunities has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must set out the means by which the undertaker will work with local agencies, including the relevant planning authority, to secure as far as reasonably practicable the use of local labour, contractors, goods and services during the construction stage of the authorised development.

(3) The approved scheme must be implemented in full during the construction stage of the authorised development.

### **Burn airfield**

**24.**—(1) The authorised development must not commence until a written scheme for the management of the interaction between the authorised development and gliding operations at Burn airfield has been submitted to and approved in writing by the relevant planning authority in consultation with Burn Gliding Club.

(2) The scheme must set out written details of—

- (a) the layout and operation of Works No. 1, 2 and 3 adjacent to runway 07/25;
- (b) the means by which a minimum 50 metre offset from Works No. 1, 2 and 3 to runway 07/25 will be achieved;
- (c) the means by which the undertaker will manage activity within 100 metres of runway 07/25 on days on which runway 07/25 is operational for gliding;
- (d) a communications and management strategy to ensure that operations in relation to Works No. 1, 2 and 3 do not conflict with gliding operations on runway 07/25; and
- (e) a strategy for the provision to and use by Burn Gliding Club of new cables during winch launches to minimise the risk of cable breaks.

(3) The approved scheme must be substantially in accordance with the pipe dump plan and must be implemented in full during the construction stage of the authorised development.



## SCHEDULE 2

Article 12

## STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>	<i>(3)</i> <i>Indicative location on the works plan</i>	<i>(4)</i> <i>Works plan sheet number</i>
In the County of North Yorkshire, District of Selby	Sandwith Lane, Camblesforth	4	2
In the County of North Yorkshire, District of Selby	Race Lane, Camblesforth	10	2
In the County of North Yorkshire, District of Selby	Bull Alley Lane, Carlton	13	2
In the County of North Yorkshire, District of Selby	Hirst Road, Carlton	20	2
In the East Riding of Yorkshire	Low Road, Gowdall	31	4
In the East Riding of Yorkshire	A645 Pontefract Road, Snaith	38	4
In the East Riding of Yorkshire	M62, Snaith	43	4
In the East Riding of Yorkshire	Balne Croft Lane, Pollington	53	5
In the East Riding of Yorkshire	Unnamed road south of the Aire and Calder Navigation	57	5
In the Metropolitan Borough of Doncaster	Moss Road, Moss	85	8
In the Metropolitan Borough of Doncaster	Trumfleet Lane, Moss	89	8
In the Metropolitan Borough of Doncaster	Wrancarr Lane, Trumfleet	94	9
In the Metropolitan Borough of Doncaster	Airey Lane, Thorpe in Balne	103	10
In the Metropolitan Borough of Doncaster	Bell Croft Lane, Thorpe in Balne	105	10
In the Metropolitan Borough of Doncaster	Applehurst Lane, Thorpe in Balne	109	10

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## SCHEDULE 3

Article 14

## PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
In the East Riding of Yorkshire	Gowdall Footpath No. 1 (Dorr Lane)	Approximately 30 metres of Dorr Lane shown orange and marked “05” on sheet 4 of the public rights of way plan
In the East Riding of Yorkshire	Snaith and Cowick Footpath No. 22	Approximately 30 metres of the unnamed public right of way shown orange and marked “06” on sheet 4 of the public rights of way plan
In the East Riding of Yorkshire	Pollington Footpath No. 3	Approximately 30 metres of the unnamed public right of way shown orange and marked “07” on sheet 5 of the public rights of way plan
In the County of North Yorkshire, District of Selby	Bridleway No. 35.3/17/1 (Forming part of the Trans Pennine Trail)	Approximately 30 metres of the unnamed public right of way shown orange and marked “09” on sheet 6 of the public rights of way plan
In the Metropolitan Borough of Doncaster	Fenwick Footpath No. 12 (Bunfold Shaw Lane)	Approximately 30 metres of Fenwick Footpath No. 12 shown orange and marked “11” on sheet 7 of the public rights of way plan
In the Metropolitan Borough of Doncaster	Fenwick Footpath No. 10	Approximately 30 metres of Fenwick Footpath No. 10 shown orange and marked “12” on sheet 7 of the public rights of way plan
In the Metropolitan Borough of Doncaster	Fenwick Footpath No. 15	Approximately 30 metres of Fenwick Footpath No. 15 shown orange and marked “13” on sheet 7 of the public rights of way plan
In the Metropolitan Borough of Doncaster	Fenwick Footpath No. 14	Approximately 30 metres of Fenwick Footpath No. 14 shown orange and marked “14” on sheet 8 of the public rights of way plan
In the Metropolitan Borough of Doncaster	Moss Footpath No. 6	Approximately 30 metres of Moss Footpath No. 6 shown orange and marked “15” on sheet 8 of the public rights of way plan
In the Metropolitan Borough of Doncaster	Moss Footpath No. 20	Approximately 30 metres of Moss Footpath No. 20 shown orange and marked “16” on sheet 9 of the public rights of way plan
In the Metropolitan Borough of Doncaster	Moss Bridleway No. 22 (Old House Lane)	Approximately 30 metres of Old House Land/ Moss Bridleway No. 22 shown orange and

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
		marked “17” on sheet 9 of the public rights of way plan
In the Metropolitan Borough of Doncaster	Thorpe in Balne Footpath No. 3	Approximately 30 metres of Thorpe in Balne Footpath No. 3 shown orange and marked “18” on sheet 9 of the public rights of way plan
In the Metropolitan Borough of Doncaster	Thorpe in Balne Footpath No. 1	Approximately 30 metres of Thorpe in Balne Footpath No. 1 shown orange and marked “19” on sheet 10 of the public rights of way plan
In the Metropolitan Borough of Doncaster	Thorpe In Balne Bridleway No. 10 (Airey Lane)	Approximately 30 metres of Thorpe in Balne Bridleway No. 10 (Airey Lane) shown orange and marked “20” on sheet 10 of the public rights of way plan
In the Metropolitan Borough of Doncaster	Thorpe in Balne Footpath No. 2	Approximately 30 metres of Thorpe in Balne Footpath No. 2 shown orange and marked “22” on sheet 10 of the public rights of way plan
In the Metropolitan Borough of Doncaster	Thorpe In Balne Bridleway No. 11	Approximately 30 metres of Thorpe in Balne Bridleway No. 11 shown orange and marked “24” on sheet 10 of the public rights of way plan

## SCHEDULE 4

Article 15

## ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
In the County of North Yorkshire, District of Selby	Temporary vehicular access from Common Lane shown purple and marked “2” on sheet 1 of the works plan
In the County of North Yorkshire, District of Selby	Permanent vehicular access from Sandwith Lane shown brown and marked “4” on sheet 2 of the works plan
In the County of North Yorkshire, District of Selby	Temporary vehicular access shown purple and marked “12” on sheet 2 of the works plan
In the County of North Yorkshire, District of Selby	Temporary vehicular access from Hirst Road shown purple and marked “17” on sheet 2 of the works plan

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
In the East Riding of Yorkshire	Temporary vehicular access from Low Road shown purple and marked “30” on sheet 4 of the works plan
In the East Riding of Yorkshire	Temporary vehicular access from the A645 Pontefract Road marked “37” and “38” on sheet 4 of the works plan
In the East Riding of Yorkshire	Temporary vehicular access from Long Lane shown purple and marked “46” on sheet 5 of the works plan
In the East Riding of Yorkshire	Temporary vehicular access from Balne Croft Lane marked “54” on sheet 5 of the works plan
In the County of North Yorkshire, District of Selby	Temporary vehicular access from Lowgate shown purple and marked “67” on sheet 6 of the works plan
In the Metropolitan Borough of Doncaster	Temporary vehicular access from Moss Road marked “85” and “86” on sheet 8 of the works plan
In the Metropolitan Borough of Doncaster	Temporary vehicular access from Trumfleet Lane marked “89” on sheet 8 of the works plan
In the Metropolitan Borough of Doncaster	Temporary vehicular access from Wrancarr Lane marked “94” and “95” on sheet 9 of the works plan
In the Metropolitan Borough of Doncaster	Temporary vehicular access from Bell Croft Lane marked “105” on sheet 10 of the works plan
In the Metropolitan Borough of Doncaster	Temporary vehicular access from Thorpe Bank shown purple and marked “117” on sheet 10 of the works plan

SCHEDULE 5

Article 23

LAND IN WHICH NEW RIGHTS, ETC. MAY BE ACQUIRED

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Purpose for which rights may be acquired</i>
5	The right to— (a) pass and re-pass with or without vehicles, machinery, plant and equipment for the purposes of survey, and for the purposes of

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	<p>laying down, installing, constructing, adjusting, altering, using, maintaining, repairing, renewing, upgrading, inspecting, surveying, cleansing, re-laying, diverting, making safe, making incapable of operation, removing and replacing the AGI site (as defined in article 2 (interpretation)), mains power and telecommunication cables and associated works, plant and equipment, and to effect access to the highway and site compounds;</p> <p>(b) lay down, use, repair, alter and remove matting, trackways, hard standings for the purposes of access to the AGI site and associated works, plant and equipment, and to restore and re-instate the land to its prior condition;</p> <p>(c) remove, store and stockpile topsoil and subsoil, employ water barriers and pumping equipment, remove materials and to restore and re-instate the land to its prior condition;</p> <p>(d) fell, lop, prune or cut trees, shrubs or hedges, or uproot and remove the roots of trees, shrubs and hedges for the purposes of enabling the right to pass and re-pass to adjoining land;</p> <p>(e) install, maintain, use, inspect, modify, improve, adjust, repair, replace, extend, test, cleanse and remove temporary drainage; to manage water flows in existing drains, watercourses and culverts, including by way of damming and overpumping;</p> <p>(f) remove fences, hedges, gates or other barriers during any period during which installation, construction, maintenance renewal, repair, upgrading, or replacement of the AGI site and associated works, plant and equipment is being carried out or for the exercise of the power to access the AGI site and associated works, plant and equipment (subject to the prior erection of any temporary stock proof fencing as is reasonably required) and the replacement, replanting or reinstatement of fences, hedges or other barriers following the exercise of the new rights;</p> <p>(g) erect temporary bridges (including the bridging over of or protection of the apparatus of the statutory undertakers) and supporting or protective structures for the purposes of access to the AGI site and associated works, plant and equipment from adjoining land.</p>
<p>8, 9, 11, 12, 13, 16, 17, 20, 21, 22, 31, 41, 44, 45, 50, 51, 63, 65, 68, 69, 70, 71, 79, 81, 84, 88, 89, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 114, 115, 128, 129, 132, 134, 135, 136, 137, 138, 139,</p>	<p>The right to enter and remain upon the land for the purposes of the operation, maintenance and decommissioning of the authorised development and to—</p> <p>(a) lay down, construct, install, adjust, alter, test, use, maintain, repair, renew, upgrade, inspect, survey, cleanse, re-lay, divert, make safe, make incapable of operation, replace and remove the pipeline together with ancillary equipment including cathodic protection to include installation by digging trenches, the use of or resorting to directional drilling, auger boring, thrust boring, micro tunnelling or pipe ramming</p>

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(1) <i>Number of land shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
<p>140, 142, 143, 144, 145, 146, 147, 162, 163, 164, 165, 166, 167, 171, 172, 183, 186, 187, 196, 199, 202, 211, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 231, 239, 240, 243, 245, 246, 247, 248, 251, 259, 264, 265</p>	<p>or other similar trenchless techniques for the laying of the pipeline within a corridor of up to 7.6 metres in width;</p> <p>(b) enter and be upon that part of the land over which the new rights are acquired and remain with or without all necessary plant, vehicles, machinery, materials, drilling fluids, apparatus and equipment—</p> <p>(i) for the purposes of installing, constructing, adjusting, altering, testing, using, maintaining, repairing, renewing, upgrading, inspecting, surveying, cleansing, re-laying, diverting, making safe, making incapable of operation, replacing and removing the pipeline and ancillary equipment to include cathodic protection;</p> <p>(ii) to remove, store and stockpile topsoil and subsoil and materials;</p> <p>(iii) install water barriers, trench shuttering and pumping equipment; and</p> <p>(iv) to restore and reinstate the land to its condition prior to commencement of the works to install the pipeline and ancillary equipment to include cathodic protection (subject to the retention of permanent works) following their installation within the land;</p> <p>(c) retain and use the pipeline and ancillary equipment to include cathodic protection within that part of the land over which the new rights are acquired for the purpose of the transmission of gas and for associated purposes;</p> <p>(d) upgrade, improve, widen, repair, maintain and adapt existing tracks and roadways and to pass and re-pass within that part of the land over which the new rights are acquired with or without vehicles, plant and machinery;</p> <p>(e) place and use apparatus, materials (including matting, trackways, hard standing and other material in connection with construction of haul and access roads and storage areas), plant, machinery, trench shuttering, temporary structures and welfare accommodation for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the pipeline and ancillary equipment to include cathodic protection within that part of the land over which the new rights are acquired; and to construct, lay down, use and remove temporary haul and access roads, trackways, matting and other suitable materials, including for any necessary temporary bridging of statutory undertakers' apparatus, other apparatus, conduits, watercourses, ditches and drains; and to effect access to the highway;</p> <p>(f) install, keep, maintain, replace, renew and remove pipeline marker posts, test posts and aerial markers within that part of the land over which the new rights are acquired, to identify the location of</p>

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(1) <i>Number of land shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
	<p>the pipeline (subject to the undertaker seeking to locate the marker posts so as to minimise interference with the owner’s future use and operations within the land);</p> <p>(g) fell, lop, prune or cut trees, shrubs or hedges or remove roots of trees, hedges or shrubs within that part of the land over which the new rights are acquired for the purposes of installing, constructing, adjusting, altering, testing, using, maintaining, repairing, renewing, upgrading, inspecting, surveying, cleansing, re-laying, diverting, making safe, making incapable of operation, replacing and removing the pipeline and ancillary equipment to include cathodic protection;</p> <p>(h) use, inspect, modify, maintain, adjust, alter, support, renew, repair, improve, extend, test or cleanse and to connect in to existing drainage, watercourses, sewers or culverts and to manage water flows in existing drains, watercourses and culverts, including by way of damming and overpumping within that part of the land over which the new rights are acquired;</p> <p>(i) alter, re-lay, maintain, adjust or remove existing pipes, cables or conduits or service media and associated apparatus (including apparatus of statutory undertakers) within that part of the land over which the new rights are acquired;</p> <p>(j) install, construct, maintain, use, improve, cleanse, repair, replace and remove new pipes, cables, conduits, service media and associated apparatus that are used for the purposes of transmitting or distributing electricity, communications, gas, oil, water supply, sewerage and drainage (including apparatus of statutory undertakers) within that part of the land over which the new rights are acquired;</p> <p>(k) erect, maintain and remove temporary fencing for site safety and to create, retain and remove temporary secure works compounds within that part of the land over which the new rights are acquired;</p> <p>(l) remove fences, hedges, gates or other barriers during any period during which laying down, construction, installation, adjusting, altering, testing, maintaining, repairing, renewing, upgrading, cleansing, relaying, diverting, making safe, making incapable of operation, replacing and removing the pipeline and ancillary equipment to include cathodic protection (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement, replanting or re-instatement of fences, hedges or other barriers following the exercise of the new rights);</p> <p>(m) install, maintain, use, inspect, modify, improve, adjust, repair, replace, extend, test, cleanse and remove temporary and permanent drainage;</p> <p>(n) carry out environmental surveys, mitigation works, maintenance and enhancement works within that part of the land over which the new rights are acquired;</p>

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(1) <i>Number of land shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
	<p>(o) enter for the purposes of intrusive surveys including for site investigation and environmental surveys, making of boreholes, trial pits and archaeological trenches, auger hole sampling and the taking of soil and other samples, and to reinstate the land to its condition prior to commencement of such works;</p> <p>(p) benefit from continuous vertical and lateral support for the pipeline and associated apparatus;</p> <p>(q) erect temporary signage and provide measures for benefit of public and personnel safety;</p> <p>(r) erect, maintain and remove temporary noise alleviation measures as well as temporary barriers for the protection of fauna within that part of the land over which the new rights are acquired.</p> <p>A restrictive covenant over the land for the benefit of the remainder of the Order land—</p> <p>(a) not to undermine or damage the pipeline nor to do anything which may interfere with free flow and passage of gas through the pipeline or support for the pipeline within that part of the land over which the new rights are acquired;</p> <p>(b) not to alter or permit or allow to be altered the then existing level of the land nor to cover or permit or allow to be covered the surface of the land over which the new rights are acquired in such manner as to render the access to the pipeline impracticable or more difficult or which may damage it within that part of the land over which the new rights are acquired;</p> <p>(c) not to erect construct or place or suffer to be erected constructed or placed any building or structure or carry out or suffer to be carried out any excavation or plant or suffer to be planted any trees on or within that part of the land without the previous consent in writing of the undertaker such consent not to be unreasonably withheld or delayed.</p>
<p>10, 18, 19, 30, 37, 38, 48, 49, 61, 62, 64, 73, 77, 85, 86, 87, 133, 179, 180, 190, 193, 205, 208, 227, 229, 235, 237, 263</p>	<p>The right to enter and remain upon the land for the purposes of the operation, maintenance and decommissioning of the authorised development and to—</p> <p>(a) lay down, construct, install, adjust, alter, test, use, maintain, repair, renew, upgrade, inspect, survey, cleanse, re-lay, divert, make safe, make incapable of operation, replace and remove the pipeline together with ancillary equipment including cathodic protection to include installation by digging trenches, the use of or resorting to directional drilling, auger boring, thrust boring, micro tunnelling or pipe ramming or other similar trenchless techniques for the laying of the pipeline within a corridor of up to 7.6 metres in width;</p> <p>(b) enter and be upon that part of the land over which the new rights are acquired and remain with or without all necessary plant, vehicles, machinery, materials, drilling fluids, apparatus and equipment—</p>



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(1) <i>Number of land shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
	<ul style="list-style-type: none"> <li>(i) for the purposes of installing, constructing, adjusting, altering, testing, using, maintaining, repairing, renewing, upgrading, inspecting, surveying, cleansing, re-laying, diverting, making safe, making incapable of operation, replacing and removing the pipeline and ancillary equipment to include cathodic protection;</li> <li>(ii) to remove, store and stockpile topsoil and subsoil and materials;</li> <li>(iii) install water barriers, trench shuttering and pumping equipment; and</li> <li>(iv) to restore and reinstate the land to its condition prior to commencement of the works to install the pipeline and ancillary equipment to include cathodic protection (subject to the retention of permanent works) following their installation within the land;</li> <li>(c) retain and use the pipeline and ancillary equipment to include cathodic protection within that part of the land over which the new rights are acquired for the purpose of the transmission of gas and for associated purposes;</li> <li>(d) upgrade, improve, widen, repair, maintain and adapt existing tracks and roadways and to pass and re-pass within that part of the land over which the new rights are acquired with or without vehicles, plant and machinery;</li> <li>(e) place and use apparatus, materials (including matting, trackways, hard standing and other material in connection with construction of haul and access roads and storage areas), plant, machinery, trench shuttering, temporary structures and welfare accommodation for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the pipeline and ancillary equipment to include cathodic protection within that part of the land over which the new rights are acquired; and to construct, lay down, use and remove temporary haul and access roads, trackways, matting and other suitable materials, including for any necessary temporary bridging of statutory undertakers' apparatus, other apparatus, conduits, watercourses, ditches and drains; and to effect access to the highway;</li> <li>(f) install, keep, maintain, replace, renew and remove pipeline marker posts, test posts and aerial markers within that part of the land over which the new rights are acquired, to identify the location of the pipeline (subject to the undertaker seeking to locate the marker posts so as to minimise interference with the owner's future use and operations within the land);</li> <li>(g) fell, lop, prune or cut trees, shrubs or hedges or remove roots of trees, hedges or shrubs within that part of the land over which the new rights</li> </ul>

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(1) <i>Number of land shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
	<p>are acquired for the purposes of installing, constructing, adjusting, altering, testing, using, maintaining, repairing, renewing, upgrading, inspecting, surveying, cleansing, re-laying, diverting, making safe, making incapable of operation, replacing and removing the pipeline and ancillary equipment to include cathodic protection;</p> <p>(h) use, inspect, modify, maintain, adjust, alter, support, renew, repair, improve, extend, test or cleanse and to connect in to existing drainage, watercourses, sewers or culverts and to manage water flows in existing drains, watercourses and culverts, including by way of damming and overpumping within that part of the land over which the new rights are acquired;</p> <p>(i) alter, re-lay, maintain, adjust or remove existing pipes, cables or conduits or service media and associated apparatus (including apparatus of statutory undertakers) within that part of the land over which the new rights are acquired;</p> <p>(j) install, construct, maintain, use, improve, cleanse, repair, replace and remove new pipes, cables, conduits, service media and associated apparatus that are used for the purposes of transmitting or distributing electricity, communications, gas, oil, water supply, sewerage and drainage (including apparatus of statutory undertakers) within that part of the land over which the new rights are acquired;</p> <p>(k) erect, maintain and remove temporary fencing for site safety and to create, retain and remove temporary secure works compounds within that part of the land over which the new rights are acquired;</p> <p>(l) remove fences, hedges, gates or other barriers during any period during which laying down, construction, installation, adjusting, altering, testing, maintaining, repairing, renewing, upgrading, cleansing, relaying, diverting, making safe, making incapable of operation, replacing and removing the pipeline and ancillary equipment to include cathodic protection (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement, replanting or re-instatement of fences, hedges or other barriers following the exercise of the new rights);</p> <p>(m) install, maintain, use, inspect, modify, improve, adjust, repair, replace, extend, test, cleanse and remove temporary and permanent drainage;</p> <p>(n) carry out environmental surveys, mitigation works, maintenance and enhancement works within that part of the land over which the new rights are acquired;</p> <p>(o) enter for the purposes of intrusive surveys including for site investigation and environmental surveys, making of boreholes, trial pits and archaeological trenches, auger hole sampling and the taking of soil and other samples, and to reinstate the land to its condition prior to commencement of such works;</p>

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(1) <i>Number of land shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
	<p>(p) benefit from continuous vertical and lateral support for the pipeline and associated apparatus;</p> <p>(q) erect temporary signage and provide measures for benefit of public and personnel safety; and</p> <p>(r) erect, maintain and remove temporary noise alleviation measures as well as temporary barriers for the protection of fauna within that part of the land over which the new rights are acquired.</p>
175	<p>The right to enter and remain upon the land for the purposes of the operation, maintenance and decommissioning of the authorised development and to—</p> <p>(a) lay down, construct, install, adjust, alter, test, use, maintain, repair, renew, upgrade, inspect, survey, cleanse, re-lay, divert, make safe, make incapable of operation, replace and remove cathodic protection, mains power and telecommunications cables, cabinets and kiosks and permanent access road;</p> <p>(b) enter and be upon that part of the land over which the new rights are acquired and remain with or without all necessary plant, vehicles, machinery, materials, drilling fluids, apparatus and equipment—</p> <p>(i) for the purposes of installing, constructing, adjusting, altering, testing, using, maintaining, repairing, renewing, upgrading, inspecting, surveying, cleansing, re-laying, diverting, making safe, making incapable of operation, replacing and removing cathodic protection, mains power and telecommunications cables, cabinets and kiosks and permanent access road;</p> <p>(ii) to remove, store and stockpile topsoil and subsoil and materials, install water barriers, trench shuttering and pumping equipment; and</p> <p>(iii) to restore and reinstate the land to its condition prior to commencement of the works to install the cathodic protection, mains power and telecommunications cables, cabinets and kiosks and permanent access road (subject to the retention of permanent works) following their installation within the land;</p> <p>(c) retain and use the cathodic protection, mains power and telecommunications cables, cabinets and kiosks and permanent access road within that part of the land over which the new rights are acquired for the purposes of the authorised development;</p> <p>(d) upgrade, improve, widen, repair, maintain and adapt existing tracks and roadways and to pass and re-pass within that part of the land over which the new rights are acquired with or without vehicles, plant and machinery;</p> <p>(e) place and use apparatus, materials (including matting, trackways, hard standing and other material in connection with construction of haul and access roads and storage areas), plant, machinery,</p>

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(1) <i>Number of land shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
	<p>trench shuttering, temporary structures and welfare accommodation for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cathodic protection, mains power and telecommunications cables, cabinets and kiosks and permanent access road within that part of the land over which the new rights are acquired; and to construct, lay down, use and remove temporary haul and access roads, trackways, matting and other suitable materials, including for any necessary temporary bridging of statutory undertakers' apparatus, other apparatus, conduits, watercourses, ditches and drains; and to effect access to the highway;</p> <p>(f) install, keep, maintain, replace, renew and remove cathodic protection marker posts and test posts within that part of the land over which the new rights are acquired, to identify the location of the cathodic protection infrastructure (subject to the undertaker seeking to locate the marker posts so as to minimise interference with the owner's future use and operations within the land);</p> <p>(g) fell, lop, prune or cut trees, shrubs or hedges or remove roots of trees, hedges or shrubs within that part of the land over which the new rights are acquired for the purposes of installing, constructing, adjusting, altering, testing, using, maintaining, repairing, renewing, upgrading, inspecting, surveying, cleansing, re-laying, diverting, making safe, making incapable of operation, replacing and removing the cathodic protection, mains power and telecommunications cables, cabinets and kiosks and permanent access road;</p> <p>(h) use, inspect, modify, maintain, adjust, alter, support, renew, repair, improve, extend, test or cleanse and to connect in to existing drainage, watercourses, sewers or culverts and to manage water flows in existing drains, watercourses and culverts, including by way of damming and overpumping within that part of the land over which the new rights are acquired;</p> <p>(i) alter, re-lay, maintain, adjust or remove existing pipes, cables or conduits or service media and associated apparatus (including apparatus of statutory undertakers) within that part of the land over which the new rights are acquired;</p> <p>(j) install, construct, maintain, use, improve, cleanse, repair, replace and remove new pipes, cables, conduits, service media and associated apparatus that are used for the purposes of transmitting or distributing electricity, communications, gas, oil, water supply, sewerage and drainage (including apparatus of statutory undertakers) within that part of the land over which the new rights are acquired;</p> <p>(k) erect, maintain and remove temporary fencing for site safety and to create, retain and remove temporary secure works compounds within that part of the land over which the new rights are acquired;</p>

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(1) <i>Number of land shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
	<p>(l) remove fences, hedges, gates or other barriers during any period during which laying down, construction, installation, adjusting, altering, testing, maintaining, repairing, renewing, upgrading, cleansing, relaying, diverting, making safe, making incapable of operation, replacing and removing the cathodic protection, mains power and telecommunications cables, cabinets and kiosks and permanent access road (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement, replanting or re-instatement of fences, hedges or other barriers following the exercise of the new rights);</p> <p>(m) install, maintain, use, inspect, modify, improve, adjust, repair, replace, extend, test, cleanse and remove temporary and permanent drainage;</p> <p>(n) carry out environmental surveys, mitigation works, maintenance and enhancement works within that part of the land over which the new rights are acquired;</p> <p>(o) enter for the purposes of intrusive surveys including for site investigation and environmental surveys, making of boreholes, trial pits and archaeological trenches, auger hole sampling and the taking of soil and other samples, and to reinstate the land to its condition prior to commencement of such works;</p> <p>(p) benefit from continuous vertical and lateral support for the cathodic protection, mains power and telecommunications cables, cabinets and kiosks and permanent access road;</p> <p>(q) erect temporary signage and provide measures for benefit of public and personnel safety;</p> <p>(r) erect, maintain and remove temporary noise alleviation measures as well as temporary barriers for the protection of fauna within that part of the land over which the new rights are acquired.</p> <p>A restrictive covenant over the land for the benefit of the remainder of the Order land—</p> <p>(a) not to undermine or damage the cathodic protection, mains power and telecommunications cables, cabinets and kiosks and permanent access road, nor to do anything which may interfere with the operation of or support for such equipment within that part of the land over which the new rights are acquired;</p> <p>(b) not to alter or permit or allow to be altered the then existing level of the land nor to cover or permit or allow to be covered the surface of the land within that part of the land over which the new rights are acquired in such manner as to render the access to the cathodic protection, mains power and telecommunications cables, cabinets and kiosks and permanent access road impracticable or more difficult or which may damage it within that part of the land over which the new rights are acquired;</p>

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(1) <i>Number of land shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
	(c) not to erect construct or place or suffer to be erected constructed or placed any building or structure or carry out or suffer to be carried out any excavation or plant or suffer to be planted any trees on within that part of the land without the previous consent in writing of the undertaker such consent not to be unreasonably withheld or delayed.
176	<p>The right to—</p> <p>(a) pass and re-pass with or without vehicles, machinery, plant and equipment for the purposes of survey, and for the purposes of laying down, installing, constructing, adjusting, altering, using, maintaining, inspecting, surveying, cleansing, re-laying, diverting, making safe, making incapable of operation, removing and replacing cathodic protection, mains power and telecommunication cables, cabinets and kiosks and permanent access road, and to effect access to the highway and site compounds;</p> <p>(b) lay down, use, repair, alter and remove matting, trackways, hard standings for the purposes of access to the cathodic protection, mains power and telecommunication cables, cabinets and kiosks and permanent access road and to restore and re-instate the land to its prior condition;</p> <p>(c) remove, store and stockpile topsoil and subsoil, employ water barriers and pumping equipment, remove materials and to restore and re-instate the land to its prior condition;</p> <p>(d) fell, lop, prune or cut trees, shrubs or hedges, or uproot and remove the roots of trees, shrubs and hedges for the purposes of enabling the right to pass and re-pass to adjoining land;</p> <p>(e) install, maintain, use, inspect, modify, improve, adjust, repair, replace, extend, test, cleanse and remove temporary drainage; to manage water flows in existing drains, watercourses and culverts, including by way of damming and overpumping;</p> <p>(f) remove fences, hedges, gates or other barriers during any period during which installation, construction, maintenance renewal, repair, upgrading, or replacement of the cathodic protection, mains power and telecommunication cables, cabinets and kiosks and permanent access road is being carried out or for the exercise of the power to access the cathodic protection, mains power and telecommunication cables, cabinets and kiosks and permanent access road (subject to the prior erection of any temporary stock proof fencing as is reasonably required) and the replacement, replanting or re-instatement of fences, hedges or other barriers following the exercise of the new rights;</p> <p>(g) erect temporary bridges (including the bridging over of or protection of the apparatus of the statutory undertakers) and supporting or protective structures for the purposes of access to the cathodic</p>

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<p>(1)</p> <p><i>Number of land shown on land plans</i></p>	<p>(2)</p> <p><i>Purpose for which rights may be acquired</i></p>
	<p>protection, mains power and telecommunication cables, cabinets and kiosks and permanent access road from adjoining land.</p>

SCHEDULE 6

Article 23

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

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

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973<sup>(21)</sup> has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there are substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there are substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition) as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there are substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there are substituted the words “right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there are substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there are substituted the words “right or restrictive covenant is”.

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land so that, in the appropriate contexts, references in that Act to land are 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
- (b) the land over which the right is or is to be exercisable.

(21) 1973 c.26.

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(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) 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.”.

5. For section 8 of the 1965 Act (provisions as to divided land) there is substituted the following section—

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

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
  - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
  - (ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

the Thorpe Marsh Gas Pipeline Order 2016 (“the Order”), in relation to that person, ceases to authorise the purchase of the right and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

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

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made, but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

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

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



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- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land);

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

7. Section 11 of the 1965 Act (powers of entry) is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice), and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

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

9. Section 22 of the 1965 Act (protection of acquiring authority’s possession where by inadvertence an estate, right or interest has not been got in) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 7

Article 29

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

PART A

Land of which temporary possession may be taken

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
5, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 30, 31, 37, 38, 41, 44, 45, 48, 137, 138, 139, 140, 142, 143, 144, 145, 146, 147, 162	Construction and carrying out of the authorised development, work sites for the construction and carrying out of the authorised development, the laying of temporary haul roads and improvements to tracks, access for the carrying out of the authorised development.
3, 4, 7, 25, 32, 33, 34, 35, 36, 39, 40, 42, 43, 46, 47, 141, 148	Working site, construction and storage compound, access for the carrying out of the authorised development.

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<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
23, 26, 28, 149, 151, 152, 153, 154, 156, 157, 158, 159, 160, 161	The laying of temporary haul roads and improvements to tracks, modifications to roads, access for the carrying out of the authorised development.
49, 50, 51, 61, 62, 63, 64, 65, 68, 69, 70, 71, 73, 77, 79, 81, 84, 85, 86, 87, 88, 89, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 114, 115, 128, 129, 132, 133, 134, 135, 136,	Construction and carrying out of the authorised development, work sites for the construction and carrying out of the authorised development, the laying of temporary haul roads and improvements to tracks, access for the carrying out of the authorised development.
52, 53, 54, 55, 66, 67, 72, 75, 78, 80, 82, 83, 90, 91, 112, 113, 130, 131	Working site, construction and storage compound, access for the carrying out of the authorised development.
59, 60, 74, 76, 92, 97, 98, 100, 116, 117, 118, 124, 125, 126, 127	The laying of temporary haul roads and improvements to tracks, modifications to roads, access for the carrying out of the authorised development.
163, 164, 165, 166, 167, 171, 172, 175, 176, 179, 180, 183, 186, 187, 190, 193, 196, 199, 202, 205, 208, 211, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 227, 229, 231, 235, 237, 239, 240, 243, 245, 246, 247, 248, 251, 259, 263, 264, 265	Construction and carrying out of the authorised development, work sites for the construction and carrying out of the authorised development, the laying of temporary haul roads and improvements to tracks, access for the carrying out of the authorised development.
173, 174, 178, 181, 182, 184, 185, 188, 189, 191, 192, 194, 195, 197, 198, 200, 201, 203, 204, 206, 207, 209, 210, 212, 213, 226, 228, 230, 232, 233, 234, 236, 238, 241, 242, 244, 249, 250, 260, 261, 262	Working site, construction and storage compound, access for the carrying out of the authorised development.
177, 252, 256, 257, 258	The laying of temporary haul roads and improvements to tracks, modifications to roads, access for the carrying out of the authorised development.

## PART B

Land over which temporary access may be taken where others use the same

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
1, 2, 14, 15, 24, 27, 29, 150, 155	The laying of temporary haul roads and improvements to tracks; access for carrying out the authorised development.

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
56, 57, 58, 93, 94, 95, 96, 99, 119, 120, 121, 122, 123	The laying of temporary haul roads and improvements to tracks; access for carrying out the authorised development.
253, 254, 255	The laying of temporary haul roads and improvements to tracks; access for carrying out the authorised development.

## SCHEDULE 8

Article 37

## REMOVAL OF IMPORTANT HEDGEROWS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Important hedgerow</i>
In the County of North Yorkshire, District of Selby	The important hedgerow marked “1” on sheet 3 of the important hedgerows plan
In the East Riding of Yorkshire	The important hedgerow marked “2” on sheet 4 of the important hedgerows plan
In the East Riding of Yorkshire	The important hedgerow marked “3” on sheet 4 of the important hedgerows plan
In the East Riding of Yorkshire	The important hedgerow marked “4” on sheet 4 of the important hedgerows plan
In the East Riding of Yorkshire	The important hedgerow marked “5” on sheet 4 of the important hedgerows plan
In the East Riding of Yorkshire	The important hedgerow marked “6” on sheet 4 of the important hedgerows plan
In the East Riding of Yorkshire	The important hedgerow marked “9” on sheet 5 of the important hedgerows plan
In the East Riding of Yorkshire	The important hedgerow marked “10” on sheet 5 of the important hedgerows plan
In the East Riding of Yorkshire	The important hedgerow marked “11” on sheet 5 of the important hedgerows plan
In the East Riding of Yorkshire	The important hedgerow marked “12” on sheet 5 of the important hedgerows plan
In the East Riding of Yorkshire	The important hedgerow marked “13” on sheet 6 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “14” on sheet 6 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “15” on sheet 7 of the important hedgerows plan

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Important hedgerow</i>
In the Metropolitan Borough of Doncaster	The important hedgerow marked “17” on sheet 7 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “19” on sheet 7 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “20” on sheet 7 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “21” on sheet 8 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “22” on sheet 8 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “26” on sheet 9 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “27” on sheet 9 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “28” on sheet 9 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “29” on sheet 10 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “31” on sheet 10 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “32” on sheet 10 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “35” on sheet 10 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “36” on sheet 10 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “37” on sheet 10 of the important hedgerows plan

## SCHEDULE 9

Article 41

## PROTECTIVE PROVISIONS

## PART 1

## For the Protection of Network Rail Infrastructure Limited

**1.** The following provisions of this Part have effect unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 14, any other person on whom rights or obligations are conferred by that paragraph.

**2. In this Part—**

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of the powers under section 8 of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

**3.—(1)** Where under this Part Network Rail is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

**4.—(1)** The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and—

- (a) if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans

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and the grounds of disapproval, the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker;

- (b) if by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans, the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation, de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker must not commence the construction of the specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

**5.—**(1) Any specified work and any protective works to be constructed by virtue of paragraph 4(4) must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 4;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable and properly incurred expenses to which Network Rail may be put and compensation for any loss which it may properly sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

**6.** The undertaker must—

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- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

7. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part during their construction and must supply the undertaker with all such information as it may reasonably require with regard to such works or the method of constructing them.

8.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable and proper cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably and properly incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail may assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 4(3), pay to Network Rail all reasonable and properly incurred expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 9(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

9. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably and properly incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 4(3) or in constructing any protective works under the provisions of paragraph 4(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it may be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the

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construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified work, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

**10.—(1) In this paragraph—**

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail’s apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 4(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 4(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to paragraph (a).

(5) In any case where it is established that EMI can reasonably be prevented only by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 4(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of commercial operation of the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail’s apparatus.

(7) In the event of EMI having occurred—



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- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
  - (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
  - (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.
- (8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraph (5) or (6)—
- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
  - (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 5.
- (9) To the extent that it would not otherwise do so, the indemnity in paragraph 14(1) applies to the costs and expenses reasonably and properly incurred or losses properly suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.
- (10) For the purpose of paragraph 9(a), any modifications to Network Rail's apparatus under this paragraph is deemed to be protective works referred to in that sub-paragraph.
- (11) In relation to any dispute arising under this paragraph, the reference in article 42 (arbitration) to an arbitrator to be agreed is to be read as a reference to an arbitrator being a member of the Institution of Engineering and Technology to be agreed.
- 11.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.
- 12.** The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.
- 13.** Any additional expenses which Network Rail may reasonably and properly incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.
- 14.—(1)** The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part which may be occasioned to or reasonably and properly incurred by Network Rail—
- (a) by reason of the construction or maintenance of a specified work 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 a specified work,
- and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission:

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

(2) Network Rail must give the undertaker notice of any such claim or demand as soon as is reasonably practicable and no settlement or compromise of such a claim or demand may be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) must include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably and properly incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**15.** Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part (including the amount of the relevant costs mentioned in paragraph 14) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part (including any claim relating to those relevant costs).

**16.** In the assessment of any sums payable to Network Rail under this Part there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.

**17.** 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.

**18.** The undertaker must give written notice to Network Rail where any submission is proposed to be made by the undertaker for the Secretary of State's consent under article 8 (consent to transfer benefit of Order) and any such notice must be given no later than 28 days before any such submission is made and must describe or give (as appropriate)—

- (a) the nature of the submission to be made;
- (b) the extent of the geographical area to which the submission relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the submission is to be made.

19. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 40 (certification of plans etc.), provide a set of those plans to Network Rail in the form of a computer disc with read-only memory.

## PART 2

### For the Protection of National Grid Electricity Transmission plc and National Grid Gas plc

#### Application

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

#### Interpretation

2. In this Part—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of the protected person to enable the protected person in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

(a) in the case of National Grid Electricity Transmission plc, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid Electricity Transmission plc;

(b) in the case of National Grid Gas, any mains, pipes or other apparatus belonging to or maintained by National Grid Gas for the purposes of gas supply;

“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, across, along or upon such land;

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

“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 person” means—

(a) in relation to its undertaking for the purposes of electricity transmission, National Grid Electricity Transmission plc; and

(b) in relation to its undertaking for the purposes of gas supply, National Grid Gas, as applicable.

3. Except for paragraphs 4 (apparatus of protected person in stopped up streets), 9 (retained apparatus: protection for National Grid Electricity Transmission plc), 10 (expenses) and 11 (indemnity) this Part does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act.

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### **Apparatus of protected person in stopped up streets**

4. Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary stopping up of streets) or article 14 (temporary stopping up of public rights of way), a protected person is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

### **Acquisition of land**

5.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any land interest or apparatus or override any easement or other interest of a protected person or create any new rights over the same otherwise than by agreement of the relevant protected person such agreement not to be unreasonably withheld or delayed (having regard to the protected person's existing and future requirements for such land or interests).

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

### **Removal of apparatus**

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

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the protected person in question 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if, in consequence of the exercise of any of the powers conferred by this Order, a protected person reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the protected person to its satisfaction (taking into account paragraph 7(1)) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) subsequently, 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 protected person in question 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 does not extend to the requirement for the protected person 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 the undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between the protected person in question and the undertaker (both parties acting reasonably).

(5) The protected person in question must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the protected person 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.

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

7.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to a protected person 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 protected person in question and must be no less favourable on the whole to the protected person in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by the protected person.

(2) If the facilities and rights to be afforded by the undertaker and agreed with the protected person under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the protected person 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 matter must be referred to arbitration and the arbitrator must make such provision for the payment of compensation by the undertaker to that protected person as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection for National Grid Gas plc**

8.—(1) Not less than 56 days before the commencement of any works authorised by 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) or otherwise, the undertaker must submit to the protected person in question a plan.

(2) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus, the plan to be submitted to the protected person under sub-paragraph (1) must be detailed including a method statement and describing—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) the intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraph (2) applies until the protected person has given written approval of the plan so submitted.

(4) Any approval of the protected person required under sub-paragraph (3)—

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- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) must not be unreasonably withheld.

(5) In relation to a work to which sub-paragraph (2) applies, the protected person may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order must be executed only in accordance with the plan submitted under sub-paragraph (1) as amended from time to time by agreement between the undertaker and the protected person and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the protected person for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected person is entitled to watch and inspect the execution of those works.

(7) Where a protected person requires any protective works to be carried out either itself or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the protected person's satisfaction prior to the commencement of any works (or any relevant part thereof) and the protected person must give 56 days' notice of the protective works from the date of submission of a plan in accordance with sub-paragraph (1) (except in an emergency).

(8) If a protected person in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 5 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(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 any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(10) The undertaker is not 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 the protected person in question notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraph (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 this Order the undertaker must comply with National Grid Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid high pressure gas pipelines and associated installation requirements for third parties T/SP/SSW22" and Health and Safety Executive's "HS(-G)47 Avoiding Danger from Underground Services".

### **Retained apparatus: protection for National Grid Electricity Transmission plc**

9.—(1) Not less than 56 days before the commencement of any works authorised by 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) or otherwise, the undertaker must submit to the protected person in question a plan and seek from the protected person in question 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 15 metres measured in any direction of any apparatus, or involve embankment works within 15 metres of any apparatus, the plan to be submitted to the protected person under sub-paragraph (1) must be detailed including a method statement and describing—

- (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.

(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 to the protected person under sub-paragraph (1) must be detailed including a method statement and describing in addition to the matters set out in sub-paragraph (2)—

- (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 the protected person's engineers; and
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of OHL construction traffic.

(4) The undertaker must not commence any works to which sub-paragraph (2) or (3) apply until the protected person has given written approval of the plan so submitted.

(5) Any approval of the protected person required under sub-paragraph (4)—

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

(6) In relation to a work to which sub-paragraph (2) or (3) apply, the protected person may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under this Order must be executed only in accordance with the plan submitted under sub-paragraph (1) as amended from time to time by agreement between the undertaker and the protected person and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (6) or (8) by the protected person for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected person is entitled to watch and inspect the execution of those works.

(8) Where a protected person requires any protective works to be carried out either itself or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the protected person's satisfaction prior to the commencement of any works (or any relevant

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part thereof) and the protected person must give 56 days' notice of the protective works from the date of submission of a plan in accordance with sub-paragraph (1) (except in an emergency).

(9) If a protected person in accordance with sub-paragraph (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 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(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 any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(11) The undertaker is not 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 the protected person in question notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraph (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 this Order the undertaker must comply with National Grid Electricity Transmission plc's policies for development near overhead lines EN43-8 and Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

## **Expenses**

**10.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to a protected person on demand all charges, costs and expenses reasonably incurred by that protected person in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Part including without limitation any costs reasonably incurred or compensation properly paid in connection with—

- (a) the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that the protected person elects to use compulsory purchase powers to acquire any necessary rights under paragraph 6(3) all costs incurred as a result of such action;
- (b) 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; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part 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—



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- (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 settled 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 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 protected person in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs must 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; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a protected person in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the protected person 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**

**11.**—(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 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 the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part or any subsidence resulting from any of those works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a protected person, or there is any interruption in any service provided, or in the supply of any goods, by any protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by that protected person in making good such damage or restoring the supply; and
- (b) indemnify that protected person for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the protected person, by reason or in consequence of any such damage or interruption or the protected person becoming liable to any third party.

(2) The fact that any act or thing may have been done by a protected person on behalf of the undertaker or in accordance with a plan approved by a protected person or in accordance with any requirement of a protected person or under its supervision does not (subject to sub-paragraph (3)) excuse the undertaker from liability under the provisions of sub-paragraph (1).

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

### **Ground subsidence monitoring scheme in respect of protected person's apparatus**

**12.**—(1) No works within 15 metres of any apparatus or alternative apparatus which are capable of interfering with or risking damage to a protected person's apparatus may commence until a scheme for monitoring ground subsidence (referred to in this paragraph as the "monitoring scheme") has been submitted to and approved by the relevant protected person, such approval not to be unreasonably withheld or delayed.

(2) The ground subsidence monitoring scheme described in sub-paragraph (1) must set out—

- (a) the apparatus which is to be subject to such monitoring;
- (b) the extent of land to be monitored;
- (c) the manner in which ground levels are to be monitored;
- (d) the timescales of any monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, requires the undertaker to submit for the relevant protected person's approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (4).

(3) The monitoring scheme required by sub-paragraph (1) must be submitted not less than 56 days before the commencement of any works authorised by this Order or comprised within the authorised development, and any requirements of the protected person must be notified within 28 days of receipt of the monitoring scheme; thereafter the monitoring scheme must be implemented as approved, unless otherwise agreed in writing with the protected person.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a "mitigation scheme") must be submitted to the protected person for approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the protected person save that the protected person retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and may recover any such costs in line with paragraph 10.

(5) If the monitoring scheme or mitigation scheme would conflict with any aspect of any ground subsidence monitoring scheme or ground subsidence mitigation scheme approved by the relevant planning authority pursuant to Part 2 of Schedule 1 (Requirements) the undertaker may submit a revised monitoring scheme or mitigation scheme to the protected person for its approval, such approval not to be unreasonably withheld or delayed; and the revised monitoring scheme or mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the protected person.

### **Enactments and agreements**

**13.** Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and a protected person 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**

**14.** Where, in consequence of the proposed construction of any of the authorised development, the undertaker or a protected person requires the removal of apparatus under paragraph 6(2) or a

protected person makes requirements for the protection or alteration of apparatus under paragraph 8 or 9, 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 the protected person's undertaking and each protected person must use its best endeavours to co-operate with the undertaker for that purpose.

### Access

**15.** If in consequence of the agreement reached in accordance with paragraph 5(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 the protected person to maintain or use the apparatus no less effectively than was possible before such obstruction.

### Arbitration

**16.** Save for differences or disputes arising under paragraphs 6(2) and (4), 7(1), 8 and 9, any difference or dispute arising between the undertaker and a protected person under this Part must, unless otherwise agreed in writing between the undertaker and that protected person, be determined by arbitration in accordance with article 42 (arbitration).

## PART 3

### For the Protection of Electricity, Gas, Water and Sewerage Statutory Undertakers

**1.** The provisions of this Part have effect for the protection of the statutory undertakers referred to in this Part, unless otherwise agreed in writing between the undertaker and the statutory undertaker concerned.

**2.** In this Part—

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

“apparatus” means—

- (a) in the case of a statutory undertaker within paragraph (a) of the definition, electric lines or electrical plant (as defined in section 64 of the Electricity Act 1989(22)), belonging to or maintained by the statutory undertaker for the purposes of electricity supply;
- (b) in the case of a statutory undertaker within paragraph (b) of the definition, any gas mains, pipes or other apparatus belonging to or maintained by the statutory undertaker for the purposes of gas supply;
- (c) in the case of a statutory undertaker within paragraph (c) of the definition, water mains, pipes or other apparatus belonging to or maintained by the statutory undertaker for the purposes of water supply; and
- (d) in the case of a statutory undertaker within paragraph (d) of the definition—
  - (i) any drain or works vested in the statutory undertaker under the Water Industry Act 1991(23); and

(22) 1989 c.29. The definition of “electrical plan” in section 64 was amended by paragraph 38(3) of Schedule 6 to the Utilities Act 2007.

(23) 1991 c.56. Section 102(4) was amended by section 96 of the Water Act 2003. Section 104 was amended by section 96 of, and by Part 3 of Schedule 9 to, the Water Act 2003 and by section 42(3) of the Flood and Water Management Act 2010 (c.29).

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

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

and in each case 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;

“statutory undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(24);
- (c) a water undertaker(25); and
- (d) a sewerage undertaker,

for the area of the authorised development (save National Grid Gas and National Grid Electricity Transmission plc, which are not statutory undertakers for the purposes of this Part) and, in relation to any apparatus, means the statutory undertaker to whom it belongs or by whom it is maintained.

3. This Part does not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Despite any provision in this Order or anything shown on the book of reference or on the land plans, the undertaker must not acquire any apparatus other than by agreement.

5.—(1) If, in the exercise of the powers conferred by this Order or otherwise obtained by private treaty, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part and any right of a statutory undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in question.

(2) If, for the purpose of executing any works in, on, over or under any land purchased, held, appropriated or used under this Order or in, on, over or under any land within the Order limits, the undertaker requires the removal of any apparatus placed in that land, it must give to the statutory undertaker in question written notice of that requirement, together with a plan and section of the work proposed.

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed on the land referred to in sub-paragraph (2), the statutory undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in other land in which the alternative apparatus is to be constructed.

(4) The statutory 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 statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (3), proceed without unnecessary delay to construct and bring into operation the

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(24) 1986 c.44. “Gas transporter” is defined by section 7. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45) and was further amended by section 76 of the Utilities Act 2000.

(25) “Water undertaker” is defined in Schedule 1 to the Interpretation Act 1978 (c.30).

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

(5) Despite anything in sub-paragraph (4), if the undertaker gives notice in writing to the statutory 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, that work, instead of being executed by the statutory undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the statutory undertaker.

(6) Nothing in sub-paragraph (5) 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.

**6.—**(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that will or may adversely affect any apparatus the removal of which has not been required by the undertaker under that sub-paragraph, the undertaker must submit to the statutory undertaker in question a plan, section and description of the works to be executed.

(2) Those works are to 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 statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the execution of those works.

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

(4) If a statutory undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

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

**7.—**(1) Subject to the following provisions of this paragraph, the undertaker must repay to a statutory undertaker the proper and reasonable expenses incurred by that statutory undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including the proper and reasonable costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

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

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

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- (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 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 exceeding those 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 statutory undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; 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 must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a statutory undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

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

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

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

## PART 4

### For the Protection of Operators of Electronic Communications Code Networks

1. The provisions of this Part have effect for the protection of the operators referred to in this Part, unless otherwise agreed in writing between the undertaker and the operator concerned.

2. In this Part—

“2003 Act” means the Communications Act 2003(26);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code(27);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(28);

“electronic communications code network” means—

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

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

“operator” means the operator of an electronic communications code network.

3. The exercise of the powers conferred by article 31 (statutory undertakers) is subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984(29).

4.—(1) Subject to sub-paragraphs (2) and (3), 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 reasonable and proper cost incurred by the operator in making good such damage or restoring the supply as the case may be and must make proper and reasonable compensation to an operator for any other expenses, loss, damages, penalty or costs incurred by it.

(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 may be made without the consent of the undertaker which, if it withholds

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(26) 2003 c.21.

(27) Paragraph 1(3A) was added to the code (Schedule 2 to the Telecommunications Act 1984) by paragraph 4 of Schedule 3 to the Communications Act 2003.

(28) “The electronic communications code” is defined in section 106(1).

(29) 1984 c.12. Paragraph 23 was amended by paragraph 68 of Schedule 25 to the Water Act 1989 (c.15), Schedule 27 to that Act, Schedule 18 to the Electricity Act 1989 and paragraphs 5 and 8 of Schedule 3 to the Communications Act 2003.

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

5. This Part 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 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.

6. 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.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order grants development consent for, and authorises Thorpe Marsh Power Limited (“the undertaker”) to construct, operate and maintain, an up to 24 inch (609.6 millimetre) external diameter cross-country gas pipeline (to be known as the Thorpe Marsh Gas Pipeline) for the conveyance of gas and covering a distance of approximately 19.1 kilometres starting from the National Transmission System approximately 1.5 kilometres west of Camblesforth in the District of Selby in the County of North Yorkshire and ending at the proposed Thorpe Marsh Power Station to be constructed at Barnby Dun in the Metropolitan Borough of Doncaster, together with all necessary and associated development.

The Order authorises the undertaker to acquire, compulsorily or by agreement, land and rights in land to use land, as well as to override easements and other rights. The Order imposes Requirements in connection with the development for which it grants development consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 40 of this Order may be inspected free of charge at the offices of Selby District Council at Civic Centre, Doncaster Road, Selby, North Yorkshire YO8 9FT; East Riding of Yorkshire Council at County Hall, Cross Street, Beverley, East Riding of Yorkshire HU17 9BA; and Doncaster Metropolitan Borough Council at Civic Office, Waterdale, Doncaster DN1 3BU.