
STATUTORY INSTRUMENTS

2013 No. 3200

**The National Grid (King's Lynn B
Power Station Connection) Order 2013**

PART 1

Preliminary

Citation and commencement

1. This Order may be cited as the National Grid (King's Lynn B Power Station Connection) Order 2013 and shall come into force on 9th January 2014.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(1);

“the 1965 Act” means the Compulsory Purchase Act 1965(2);

“the 1980 Act” means the Highways Act 1980(3);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(4);

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- (1) 1961 c. 33. Sections 1 and 4 were amended by the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307). Sections 2 and 3 were repealed by that Order.
- (2) 1965 c. 56. The Act has been substantially amended by subsequent legislation. The principal amendments relevant to this Order are that the Courts Act 1971 (c. 23) amended section 12; the Statute Law (Repeals) Act 1973 (c. 39) amended sections 9, 25 and 29; the Rentcharges Act 1977 (c. 30) repealed section 24 subject to savings; the Acquisition of Land Act 1981 (c. 67) amended sections 1, 11, 30, 31 and 32; the Housing (Consequential Provisions) Act 1985 (c. 71) amended section 11; the Planning (Consequential Provisions) Act 1990 (c. 11) amended sections 1 and 10; the Local Government Finance (Repeals, Savings and Consequential Amendments) Order 1990 (S.I. 1990/776) repealed section 27; the Planning and Compensation Act 1991 (c. 34) amended sections 3, 5, 20 and 31; the Courts Act 2003 (c. 39) amended section 1; the Constitutional Reform Act 2005 (c. 4) amended sections 23 and 25; the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1) amended sections 11 and 31; the Tribunals, Courts and Enforcement Act 2007 (c. 15) amended section 13; and the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307) amended sections 5, 6, 8, 10, 11, and 15 to 20.
- (3) 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); and 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.
- (4) 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). Paragraphs 4, 8 and 9 of Schedule 1 were amended by Schedule 1 to the

“the 1990 Act” means the Town and Country Planning Act 1990(5);

“the 1991 Act” means the New Roads and Street Works Act 1991(6);

“the 2008 Act” means the Planning Act 2008;

“approved construction routes” means—

- (a) for all construction traffic serving towers KL01 to KL07 referred to in Work No 1, the Northern Construction Route (shown on plan reference MPP00006 - 2 Figure 1A);
- (b) for the 200 tonne lifting capacity crane vehicles serving towers KL08 and 4VV039 referred to in Work No 1, the Southern Construction Route (shown on plan reference MPP00006 - 2 Figure 2A); and
- (c) for all construction traffic serving towers KL08 and 4VV039 in the Southern Construction Route, the route approved, after consultation with the highway authority, by the relevant planning authority;

“authorised development” means the development and associated development, including any necessary demolitions, described in 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;

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

“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;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

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

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

“the land plans” means the plans (reference: A1/PTD/6320/070/Rev C, A1/PTD/6320/071/Rev B, A1/PTD/6320/072/Rev C, A1/PTD/6320/073/Rev C, A1/PTD/6320/074/Rev B and A1/PTD/6320/075/Rev B) certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 6 shown on the works plans;

Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307). 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 the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.

(5) 1990 c. 8. There are amendments to the 1990 Act not relevant to this Order.

(6) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Part 3 of the 1991 Act was amended by Part 4 of the Traffic Management Act 2004 (c. 18). Section 74 was amended, and sections 74A and 74B inserted, by sections 255 and 256 of the Transport Act 2000 (c. 38). There are other amendments to the 1991 Act which are not relevant to this Order.

“maintain” means to maintain and any of its derivatives including to inspect, repair, adjust, alter, remove, reconstruct, replace, or relay the authorised development, but not so as to vary from the description of the authorised development in Schedule 1 nor the overall shape, size and lattice form of the towers, and any derivative of “maintain” is to be construed accordingly;

“National Grid” means National Grid Electricity Transmission plc company number 2366977 whose registered office is at 1-3 the Strand, London WC2N 5EH;

“operational use” occurs when Work No 1 of the authorised development first transmits electricity at 400 kV;

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

“the Order limits” means the limits of deviation of land to be acquired or used and the limits of additional land to be acquired or used as shown on the works and land plans within which the authorised development may be carried out;

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

“permitted substation” means the substation to be constructed pursuant to deemed planning permission for King’s Lynn B Power Station dated 5 February 2009 ref: 01.08.10.04/124C;

“relevant planning authority” means the planning authority for the area of land that the provision relates to, being King’s Lynn and West Norfolk Borough Council;

“the Requirements” means the requirements in Schedule 2 (Requirements);

“rights of way plans” means the plans (reference: A0/PTD/6320/059/Rev C, A0/PTD/6320/060/Rev C, A0/PTD/6320/061/Rev B, A0/PTD/6320/062/Rev A, A0/PTD/6320/063/Rev A, A0/PTD/6320/064/Rev A and A0/PTD/6320/065/Rev B) certified as the rights of way plans by the Secretary of State for the purposes of this Order;

“the sections” means the sections shown on the plans (reference: A0/PTD/6320/046/Rev C and A0/PTD/6320/047/Rev C) certified as the sections by the Secretary of State for the purposes of this Order;

“statutory undertaker” (except in Part 1 of Schedule 8) 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;

“undertaker” means National Grid or any other person who has the benefit of this Order in accordance with article 8;

“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; and

“the works plans” means the plans (reference: A0/PTD/6320/076/Rev A, A1/PTD/6320/077/Rev B, A1/PTD/6320/078/Rev A and A1/PTD/6320/079/Rev A) certified as the works plans 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 is to be taken to be measured along that work.

(7) 1981 c. 67. The definition of “owner” in section 7 of the Act was amended by section 70 of and Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to this Act which are not relevant to this Order.

- (4) All areas described in the book of reference are approximate.
- (5) References in this Order to numbered Requirements are to the Requirements with those numbers in Schedule 2.

Application and modification of legislative provisions

3. Subject to the modifications set out in Schedule 3 the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right as they apply to the compulsory purchase of land and interests in land.

PART 2

Principal powers

Development consent etc granted by the Order

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

(2) The undertaker may install, and keep installed, above ground the electric line included in the authorised development.

(3) The undertaker may operate and use the electric line and any other elements of the authorised development as part of the high-voltage electricity transmission system in England and Wales.

(4) Subject to article 6 (limits of deviation) the authorised development comprised in Work No 1 must be constructed and installed in the lines and situations shown on the works plans and in accordance with the levels shown on the sections.

Maintenance of authorised development

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

Limits of deviation

6. In carrying out or maintaining the authorised development comprised in Work No 1 the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans, save for tower KL01 which must not deviate more than 4 metres in a northerly direction from the position indicated on the works plans; and
- (b) deviate vertically from the levels of the authorised development shown on the sections—
 - (i) to any extent not exceeding 3 metres upwards; or
 - (ii) to any extent downwards as may be necessary, convenient or expedient.

Benefit of Order

7. Subject to article 8 the provisions of this Order are to have effect solely for the benefit of the undertaker.

Consent to transfer benefit of Order

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

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

PART 3

Streets

Application of the 1991 Act

9.—(1) Works carried out under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) as major highway works if they are of a description mentioned in paragraph (f) of section 86(3) of that Act (which defines what highway authority works are major highway works).

(2) The provisions of the 1991 Act mentioned in paragraph (3) (which, together with other provisions of that Act, apply in relation to the carrying out of street works) and any regulations made, or code of practice issued or approved, under those provisions are to apply (with the necessary modifications) in relation to any closure, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 11 (temporary closure of streets and public rights of way) and the carrying out of street works under article 10 (street works) whether or not the works, closure, alteration or diversion constitutes street works within the meaning of that Act.

(3) The provisions of the 1991 Act referred to in paragraph (2) are—

- (a) section 54 (advance notice of certain works), subject to paragraph (4);
- (b) section 55 (notice of starting date of works), subject to paragraph (4);
- (c) section 56 (directions as to timing of street works);
- (d) section 57 (notice of emergency works);
- (e) section 59 (general duty of street authority to co-ordinate works);
- (f) section 60 (general duty of undertakers to co-operate);
- (g) section 65 (safety measures);
- (h) section 67 (qualifications of supervisors and operatives);
- (i) section 68 (facilities to be afforded to street authority);
- (j) section 69 (works likely to affect other apparatus in the street);
- (k) section 70 (duty of undertaking to reinstate);
- (l) section 71 (materials, workmanship and standard of reinstatement);

- (m) section 72 (powers of street authority in relation to reinstatement);
- (n) section 73 (reinstatement affected by subsequent works);
- (o) section 75 (inspection fees);
- (p) section 76 (liability for cost of temporary traffic regulation);
- (q) section 77 (liability for cost of use of alternative route); and
- (r) all such other provisions as apply for the purposes of the provisions mentioned above.

(4) Sections 54 and 55 of the 1991 Act as applied by paragraph (3) are to have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

Street works

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

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) place apparatus in the street;
- (c) maintain apparatus in the street or change its position;
- (d) strengthen, improve, repair or reconstruct any street; 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) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Temporary closure of streets and public rights of way

11.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily close, alter or divert any street or public right of way and may for any reasonable time—

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

(2) Without prejudice to paragraph (1), the undertaker may use any street or public right of way closed 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 or public right of way affected by the temporary closure, alteration or diversion of a street or public right of way under this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily close, alter or divert the streets and public rights of way specified in columns (1) and (2) of Schedule 5 (Streets subject to street works) to the extent specified, by reference to the letters and numbers shown on the rights of way plans, in column (3) of that Schedule.

(5) The undertaker must not temporarily close, alter or divert—

- (a) any street or public right of way specified as mentioned in paragraph (4) without first consulting the street authority; and

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

(6) If a street authority fails to notify the undertaker of its decision within 42 days of receiving an application for consent under paragraph (5)(b) that street authority is to be deemed to have granted consent.

Access to works

12.—(1) The undertaker may, for the purposes of carrying out, construction or maintenance of the authorised development—

- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 6 (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If the relevant planning authority fails to notify the undertaker of its decision within 42 days of receiving an application for approval under paragraph (1)(b) that planning authority is to be deemed to have granted approval.

Agreements with street authorities

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

- (a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (b) any temporary closure, alteration or diversion of a street authorised by this Order; or
- (c) the carrying out in the street of any of the works referred to in article 10 (street works) or article 12 (access to works).

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

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

PART 4

Supplemental powers

Discharge of water

14.—(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 provided that consent has been obtained from the relevant person pursuant to paragraph (3).

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991⁽⁸⁾ (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 is not to 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 is not to 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.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010⁽⁹⁾.

(8) In this article—

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

Defence to proceedings in respect of statutory nuisance

15.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽¹⁰⁾ (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 is to be made, and no fine may be imposed, under section 82(2) of that Act if—

(a) the defendant shows that the nuisance—

- (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction 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⁽¹¹⁾; or

⁽⁸⁾ 1991 c. 56. Section 106(1) amended by the Competition and Service (Utilities) Act 1992 (c. 43) Part II section 43(2); section 106(1A) added by the Water Act 2003 (c. 37) Part 3 section 99(2); section 106(4)(a) and (b) amended by the Water Act 2003 Part 3 section 99(3); section 106(5A) added by the Water Act 2003 Part 3 section 99(4); section 106(6) amended by the Water Act 2003 Part 3 sections 36(2) and 99(5); section 106(7) repealed by the Competition and Service (Utilities) Act 1992 Schedule 2, paragraph 1. There are other amendments to this Act that are not relevant to this Order.

⁽⁹⁾ S.I. 2010/675. There are amendments to the Regulations that are not relevant to this Order.

⁽¹⁰⁾ 1990 c. 43. There are amendments to this Act which are not relevant to this Order.

⁽¹¹⁾ 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to this Act which are not relevant to this Order.

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

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

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

Protective work to buildings

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

(2) Protective works may be carried out—

(a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or

(b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

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

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

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

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

(5) Before exercising—

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

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

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

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

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 34 (arbitration).

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

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

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

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

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

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

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate the land

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

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

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

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

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

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

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

but such consent is not to be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to

be determined, in case of dispute, Part 1 of the 1961 Act (determination of questions of disputed compensation).

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

- (a) under paragraph (4)(a) in the case of a highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority,

that authority is to be deemed to have granted consent.

PART 5

Powers of acquisition

Compulsory acquisition of rights

18.—(1) The undertaker may create and acquire compulsorily new rights affecting the Order land described in the book of reference and shown on the land plans.

(2) As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land or any part of it over which any new right is acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8 of the 1965 Act, as substituted by article 22 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.

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

Power to override interests, rights and restrictions

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

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

- (a) the erection, construction or carrying out, or maintenance of any building or work on land;
- (b) the erection, construction, or maintenance or anything in, on, over or under land; or
- (c) the use of any land.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(4) In respect of any interference or breach in pursuance of this article, compensation—

- (a) is to be payable under section 63 or 68 of the Lands Clauses Consolidation Act 1845(12) or under section 7 or 10 of the 1965 Act; and
 - (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under those Acts; or
 - (ii) the injury arises from the execution of works on or use of land acquired under those Acts.
- (5) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraphs (1) and (2).

Time limit for exercise of authority to acquire rights compulsorily

- 20.**—(1) After the end of the period of 5 years beginning on the day on which this Order is made—
- (a) no notice to treat is to be served under Part 1 of the 1965 Act (which makes provision for compulsory acquisition under the Acquisition of Land Act 1981); and
 - (b) no declaration is to be executed under section 4 of the 1981 Act as applied by article 21 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).
- (2) The authority conferred by article 25 (temporary use of land for carrying out the authorised development) is to cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph is to prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

- 21.**—(1) The 1981 Act is to apply as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as so applied, is to have effect with the following modifications.
- (3) In section 3 (preliminary notices), for subsection (1) there is to be substituted—
- “(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall 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.
- (4) In that section, in subsection (2), for “(1)(b)” there is to be substituted “(1)” and after “given” there is to be inserted “and published”.
- (5) In that section, for subsections (5) and (6) there is to be 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.”.
- (6) In section 5 (earliest date for execution of declaration)—

(a) in subsection (1), after “publication” there is to be inserted “in a local newspaper circulating in the area in which the land is situated”; and

(b) subsection (2) is to be omitted.

(7) 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 to be omitted.

(8) References to the 1965 Act in the 1981 Act are to be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of rights under this Order.

Acquisition of part of certain properties

22. Paragraph 5 of Schedule 3 is to apply instead of section 8 of the 1965 Act (other provisions as to divided land).

Acquisition of subsoil or airspace only

23.—(1) The undertaker may acquire compulsorily such rights in, the subsoil of or the airspace over the land referred to in paragraph (1) of article 18 (compulsory acquisition of rights) as may be required for any purpose for which rights over that land may be acquired under that provision.

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

(3) Paragraph (2) does not prevent article 22 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house or building.

Rights under or over streets

24.—(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) is not to 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 to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not to be 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

25.—(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 columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule; and
 - (ii) any of the Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act or no declaration has been made under section 4 of the 1981 Act;
 - (b) remove any buildings and vegetation from that land; and
 - (c) construct temporary works (including the provision of means of access) and buildings on that land.
- (2) 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 and its purpose on the owners and occupiers of the land.
- (3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—
- (a) in the case of land of which temporary possession may be taken under paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 7;
 - (b) in the case of any Order land, of which temporary possession may be taken under paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.
- (4) The undertaker must provide the owner of any land over which temporary possession has been taken pursuant to paragraph (3)(a) or (b) with written notice of the date of completion of the work for which that temporary possession was taken within 28 days of the completion of those works.
- (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 to be required to replace a building removed under this article.
- (6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of 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 is to affect 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)(a)(i) or (ii) except that the undertaker is not to be precluded from—
- (a) acquiring new rights over any part of that land under article 18 (compulsory acquisition of rights); or
 - (b) acquiring any part of the subsoil or of airspace over (or rights in the subsoil or of airspace over) of that land under article 23 (acquisition of subsoil or airspace only).
- (10) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

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

Temporary use of land for maintaining the authorised development

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

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

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

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

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

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

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

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

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

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

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

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

(11) In this article “the maintenance period”, in relation to the authorised development, means the period of 5 years beginning with the date on which the authorised development is brought into operational use.

Statutory undertakers

27. Subject to the provisions of Schedule 8 (protective provisions), the undertaker may acquire compulsorily the new rights over land belonging to statutory undertakers shown on the land plans and described in the book of reference.

Application of landlord and tenant law

28.—(1) This article applies to—

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

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

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

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

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

PART 6

Miscellaneous and general

Operational land for purposes of the 1990 Act

29. 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).

Felling or lopping of trees

30.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from—

- (a) obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) constituting a danger to persons using the authorised development.

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

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

Protection of interests

31. Schedule 8 (protective provisions) to this Order has effect.

Certification of plans etc

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

- (a) the book of reference;
- (b) the land plans;
- (c) the rights of way plans;
- (d) the works plans;
- (e) the sections; and
- (f) any other plans or documents referred to in this Order,

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

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

Service of notices

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

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

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

(3) For the purposes of section 7 of the Interpretation Act 1978⁽¹³⁾ as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

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

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

⁽¹³⁾ 1978 c. 30. There are amendments to this Act which are not relevant to this Order.

- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—
 - (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
 - (b) the notice or document is capable of being accessed by the recipient;
 - (c) the notice or document is legible in all material respects; and
 - (d) in a form sufficiently permanent to be used for subsequent reference.
- (6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.
- (7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).
- (8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—
 - (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
 - (b) such revocation is to be final and is to take effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.
- (9) This article is not to be taken to exclude the employment of any method of service not expressly provided for by it.

Arbitration

34. Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Procedure regarding certain approvals

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

(2) Schedule 9 is to have effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the Requirements unless otherwise agreed between the undertaker and the relevant planning authority.

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

18th December 2013

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