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STATUTORY INSTRUMENTS

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**2013 No. 3200**

**INFRASTRUCTURE PLANNING**

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

*Made - - - - 18th December 2013*

*Coming into force - - 9th January 2014*

An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>(1)</sup> for an Order under sections 114, 115 and 120 of the Planning Act 2008<sup>(2)</sup> (“the 2008 Act”);

The application was examined by a single appointed person appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act, and the examination was carried out in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010<sup>(3)</sup>;

The single appointed person, having considered the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 83(1) of the 2008 Act, made a report and recommendation to the Secretary of State;

The Secretary of State, having considered the report and recommendation of the single appointed person, and decided the application, has determined to make an Order giving effect to the proposals comprised in the application with modifications which 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) S.I. 2009/2264, amended by S.I. 2010/439, 602, 2012/635, 1659, 2654, 2732, 2013/522, 755.  
(2) 2008 c. 29. The relevant provisions of the Planning Act 2008 are amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c. 20), and by sections 22-27 of the Growth and Infrastructure Act 2013 (c. 27).  
(3) S.I. 2010/103, amended by S.I. 2012/635.

## 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(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);

“the 1991 Act” means the New Roads and Street Works Act 1991(9);

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- (4) 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.
- (5) 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.
- (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); 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.
- (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). Paragraphs 4, 8 and 9 of Schedule 1 were amended by Schedule 1 to the 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.
- (8) 1990 c. 8. There are amendments to the 1990 Act not relevant to this Order.
- (9) 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.

“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;

“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<sup>(10)</sup>;

“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.

(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.

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<sup>(10)</sup> 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.

## 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<sup>(11)</sup> (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.

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<sup>(11)</sup> 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.



- (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<sup>(12)</sup>.
- (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<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 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<sup>(14)</sup>; or
  - (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.

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<sup>(12)</sup> S.I. 2010/675. There are amendments to the Regulations that are not relevant to this Order.

<sup>(13)</sup> 1990 c. 43. There are amendments to this Act which are not relevant to this Order.

<sup>(14)</sup> 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.

### **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<sup>(15)</sup> 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.

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<sup>(15)</sup> 1845 c. 18. There are amendments to this Act which are not relevant to this Order.

(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<sup>(16)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of 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
- (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.

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<sup>(16)</sup> 1978 c. 30. There are amendments to this Act which are not relevant to this Order.

(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

## SCHEDULE 1

Article 2(1)

## Authorised development

A nationally significant infrastructure project as defined in sections 14 and 16 of the 2008 Act comprising—

- (a) *Work No 1* – The installation of a 400 kV electric line above ground, approximately 2.8 kilometres in length, comprising 9 steel lattice towers, commencing at gantries within the substation to be constructed as part of the approved King’s Lynn B Power Station development at Willows Business Park, King’s Lynn, from which it will rise to a terminal tower KL01 in the field north of New House Farm. The line would then cross High Road to a second tower KL02 approximately 370 metres due east. From this point, the line changes direction and travels approximately 694 metres south easterly crossing Low Road and the River Nar, incorporating tower KL03 and KL04. At tower KL04 the line again changes direction and travels due south through towers KL05, KL06 and KL07 for a length of approximately 1155 metres. At tower KL07 the line changes direction to the south west crossing the River Nar to connect to tower KL08, and then onto a new junction tower, a length of approximately 614 metres, to connect to the northern circuit of the existing National Grid Norwich – Walpole overhead electricity transmission line and replacing the existing National Grid tower reference 4VV039, in the Borough of King’s Lynn and West Norfolk;
- (b) *Associated Development* – comprising—
- (i) works for the creation, alteration or widening of points of access to highways;
  - (ii) means of access and footpaths;
  - (iii) retaining structures, and culverts;
  - (iv) works for the benefit or protection of land affected by the authorised development;
  - (v) construction and maintenance compounds, working areas, laydown and parking areas in connection with the construction of the authorised development;
  - (vi) welfare units;
  - (vii) underground ducting; and
  - (viii) such other works as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development which are within the scope of the environmental impact assessment recorded in the environmental document such as landscaping and ecological mitigation measures.

## SCHEDULE 2

Article 2(1)

## Requirements

**Interpretation**

1.—(1) In this Schedule and in Schedule 9—

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

“stage” refers to—

- (a) the stage of the authorised development comprising works in the vicinity of the permitted substation (including underground ducting and highway access); and
- (b) the stage comprising the remainder of the authorised development in Schedule 1 unless otherwise approved by the relevant planning authority.

(2) Where any Requirement specifies: “unless otherwise approved in writing” by the relevant planning authority; or “unless otherwise agreed in writing” with the relevant planning authority; such approval or agreement must not be given except in relation to minor or immaterial changes where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval or agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental document.

### Time limits

- 2. The authorised development must commence within 5 years of the date of this Order.

### Compliance with approved details

3.—(1) The construction of the lattice towers forming part of the authorised development comprised in Work No 1 must take place in general accordance with the approved drawings listed below unless otherwise approved in writing by the relevant planning authority—

- (a) A3/MIS/21847/071 A;
- (b) BNT167/7050 D;
- (c) BNT167/7053/B;
- (d) BNT167/7056 C;
- (e) BNT167/7055 B.

For the purposes of this Requirement 3(1) in determining general accordance the towers must be constructed within the vertical limits of deviation and must be substantially the same as those shown on the drawings (including the plan views shown on those drawings) for the respective towers as follows—

<i>Pylon ID</i>	<i>Drawing No</i>	<i>Tower Type (Height metres)</i>	<i>Tower Type including LOD (metres)</i>
KL001	BNT167/7055/B	L13 DT STD (48.071)	L13 DT E3 (51.071)
KL002	BNT167/7053/B	L13 D60 E3 (53.952)	L13 D60 E6 (56.952)
KL003	BNT167/7050/D	L13 D E3 (52.950)	L13 D E6 (55.950)
KL004	BNT167/7053/B	L13 D60 E6 (56.952)	L13 D60 E9 (59.952)
KL005	BNT167/7050/D	L13 D E6 (55.950)	L13 D E9 (58.950)
KL006	BNT167/7050/D	L13 D E6 (55.950)	L13 D E9 (58.950)
KL007	BNT167/7053/B	L13 D60 STD (50.952)	L13 D60 E3 (53.952)
KL008	BNT167/7050/D	L13 D E3 (52.950)	L13 D E6 (55.950)
New 4VV39	BNT167/7056/C	L13 DJT STD (53.460)	L13 DJT E3 (56.460)

(2) The remainder of the authorised development referred to in Schedule 1 must be carried out in general accordance with the approved drawings listed below unless otherwise agreed in writing with the relevant planning authority and must be within the Order limits—

- (a) A1/PTD/6320/080/Rev A;
- (b) A1/PTD/6320/008/Rev B;
- (c) A1/PTD/6320/009/Rev A;
- (d) A1/PTD/6320/010/Rev A;
- (e) A1/PTD/6320/011/Rev A;
- (f) A1/PTD/6320/012/Rev A;
- (g) A1/PTD/6320/013/Rev B;
- (h) A1/PTD/6320/014/Rev A;
- (i) A1/PTD/6320/015/Rev B;
- (j) A1/PTD/6320/066/Rev A;
- (k) A1/PTD/6320/067/Rev A;
- (l) A1/PTD/6320/068/Rev A;
- (m) A1/PTD/6320/069/Rev A.

For the purpose of this Requirement 3(2) development must be substantially the same as shown on the approved drawings listed above subject always to account being taken of any variation of the alignment of Work No 1 within the lateral limits of deviation in article 6 from that indicated on the works plans.

#### **Provision of landscaping**

4. A written landscaping scheme must be submitted to the relevant planning authority for its written approval prior to the authorised development being brought into operational use. The landscaping scheme must include details of all proposed landscaping works, including—

- (a) location, number, species, size of trees, tree whips and shrubs;
- (b) measures for the protection of trees, tree whips and shrubs;
- (c) planting density and proposed planting times of any proposed planting;
- (d) cultivation, importing of materials and other operations to ensure plant establishment;
- (e) proposed finished ground levels;
- (f) implementation timetables; and
- (g) details of maintenance regimes and management responsibilities.

#### **Implementation and maintenance of landscaping**

5.—(1) All landscaping works must be carried out in accordance with the landscaping schemes approved under Requirement 4 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice unless otherwise approved in writing by the relevant planning authority.

(2) The landscaping works must be carried out in accordance with implementation timetables approved under Requirement 4 unless otherwise approved in writing by the relevant planning authority.

(3) If within a period of five years beginning with the date of the planting of any tree, tree whip or shrub that tree, tree whip or shrub, or any tree, tree whip or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the relevant planning authority seriously damaged or defective, another tree, tree whip or shrub of the same species and size as that originally planted must be planted at the same place, unless otherwise approved in writing with the relevant planning authority.

### **Highway accesses**

6.—(1) No stage of the authorised development is to commence until written details of the design, layout and subsequent removal (to include the restoration of land) of any new temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular traffic, has, after consultation with the highway authority, been submitted to and approved by the relevant planning authority in relation to that stage.

(2) The access to the permitted substation is not to commence until written details of the design and layout of the permanent means of access to a highway to be used by vehicular traffic has, after consultation with the highway authority, been submitted to and approved by the relevant planning authority in relation to that stage.

(3) The highway accesses must be constructed in accordance with the approved details unless otherwise approved in writing by the relevant planning authority in relation to that stage.

### **Fencing and other means of enclosure**

7.—(1) No stage of the authorised development must commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure within the Order limits have, after consultation with the relevant planning authority, been submitted to and approved by the relevant planning authority in relation to that stage.

(2) Any fences, walls or other means of enclosure approved in accordance with sub-paragraph (1) must remain secure during construction of the authorised development, in accordance with the approved details, unless otherwise approved in writing by the relevant planning authority.

(3) Any temporary fencing must be removed on completion of the construction of the authorised development.

### **Contaminated land and groundwater**

8.—(1) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the relevant planning authority. An investigation and risk assessment must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the relevant planning authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the relevant planning authority.

(2) Where remediation is required a detailed remediation scheme to bring the site to a condition suitable for the intended use must be prepared, and submitted for the written approval of the relevant planning authority.

(3) The approved remediation scheme must be carried out in accordance with its terms unless otherwise approved in writing by the relevant planning authority.

(4) Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and approved in writing by the relevant planning authority.

### **Controlled water protection scheme**

9.—(1) No stage of the authorised development must commence until a controlled water protection scheme has, after consultation with the Environment Agency, been submitted to and approved by the relevant planning authority in relation to that stage. The scheme must include—

- (a) measures necessary taking account of the proposed pylon foundations;

- (b) any necessary de-watering;
- (c) measures to protect water sources; and
- (d) measures to protect groundwater dependent terrestrial ecosystems (including the River Nar).

(2) The authorised development must be carried out in accordance with the approved controlled water protection scheme, unless otherwise approved in writing by the relevant planning authority.

### **Archaeology**

**10.**—(1) No stage of the authorised development is to commence until a written scheme for the investigation of any areas of archaeological interest discovered during the course of carrying out of that stage of the authorised development, and as identified in the environmental document has, after consultation with Norfolk County Council, been submitted to and approved by the relevant planning authority.

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

(3) Any archaeological works or watching brief must be carried out in accordance with the approved scheme, unless otherwise agreed in writing by the relevant planning authority.

### **Landscape and ecological management plan**

**11.**—(1) No stage of the authorised development shall commence until a written landscape and ecological management plan reflecting the survey results and ecological mitigation and enhancement measures included in the environmental document, shall after consultation with the Environment Agency, be submitted to and approved by the relevant planning authority in relation to that stage.

(2) The landscape and ecological management plan must include a riparian ecology method statement in respect of all watercourses that would be affected by the project. The landscape and ecological management plan must include an implementation timetable and must be carried out as approved, unless otherwise approved in writing by the relevant planning authority.

(3) The riparian ecology method statement must include—

- (a) proposed pre-construction water vole surveys undertaken in an appropriate season and sufficiently in advance of any physical works to enable detailed management measures to be implemented;
- (b) measures to manage vegetation at the location of the works to encourage voles to naturally displace;
- (c) a programme for inspections by an ecologist of the riparian work areas;
- (d) proposed fencing of the work areas to prevent water vole entry during the works;
- (e) measures to control emissions and discharges from the works to minimise the risk of any entry of deleterious materials to watercourses;
- (f) proposed reinstatement of watercourses and riparian vegetation;
- (g) arrangements for reporting the results of surveys, mitigation measures and reinstatement works to Natural England and Environment Agency;
- (h) details of any habitat improvement/creation;
- (i) details of the treatment of site boundaries and/or buffers around water bodies; and
- (j) details of maintenance and monitoring regimes and management responsibilities.



### **Code of construction practice**

**12.** Construction works must be carried out in accordance with the code of construction practice (dated June 2013) submitted with the application, unless otherwise approved in writing by the relevant planning authority.

### **External lighting**

**13.** No stage of the authorised development is to commence until written details of any external lighting to be installed and its intended duration at any of the construction sites, including measures to prevent light spillage, have been submitted to and approved by the relevant planning authority in relation to that stage; and any approved means of lighting must subsequently be installed and retained for the approved duration unless otherwise approved in writing by the relevant planning authority.

### **Construction traffic**

**14.—(1)** No stage of the authorised development is to commence until a construction traffic management plan, including details of the following—

- (a) the approved routing plans which all drivers of construction vehicles serving towers KL08 and 4VV039 (shown on plan reference MPP00006 - 2 Figure 2A) must use;
- (b) the steps to be taken to advise all drivers of vehicles visiting the authorised development of the approved construction routes and of the measures to monitor compliance;
- (c) provision for on-site parking for construction workers;
- (d) on site wheel cleaning facilities for construction vehicles;
- (e) condition survey in relation to the bridge over the River Nar within plot 37 in the book of reference;
- (f) “before” and “after” joint road condition surveys in relation to each phase of construction;
- (g) strategic route signing;
- (h) signing at access points;
- (i) access points constructed to allow safe traffic movements;
- (j) liaison with the highway authority in respect of its programme of repair and maintenance of the public highway;
- (k) road sweeping facilities;
- (l) on site dust suppression;
- (m) how the local residents and stakeholders are to be kept informed of the construction traffic management plan;
- (n) how the construction traffic management plan will be updated as other project programmes are confirmed; and
- (o) school hour restrictions in relation to school picking up and dropping off times.

has been, after consultation with the highway authority and the Highways Agency submitted to and approved by the relevant planning authority in relation to that stage.

(2) The authorised development must be carried out in accordance with the approved construction traffic management plan, unless otherwise approved in writing by the relevant planning authority.

### **Control of noise during construction and maintenance**

15.—(1) No stage of the authorised development is to commence until a written scheme for noise management during construction and maintenance has been submitted to and approved by the relevant planning authority in relation to that stage.

(2) The scheme must set out the particulars of—

- (a) the works, and the method by which they are to be carried out;
- (b) the noise attenuation measures to be taken to minimise noise resulting from the works, including any noise limits; and
- (c) a scheme for monitoring the noise during the works to ensure compliance with the noise limits and the effectiveness of the attenuation measures.

(3) The approved noise management scheme must be implemented before any stage of the authorised development can commence, and maintained during construction and maintenance of the authorised development.

(4) The construction and maintenance works must be undertaken in accordance with the approved noise management scheme.

### **Construction hours**

16.—(1) Subject to sub-paragraphs (2) and (3) construction work must not take place other than between 0700 and 1900 hours, on any day, unless otherwise agreed by the relevant planning authority.

(2) Piling operations must not take place other than between 0800 and 1700 hours on Mondays to Fridays, unless otherwise agreed by the relevant planning authority.

(3) Protective netting of scaffolding and its subsequent removal across highways and the King's Lynn to London railway line must occur outside of the construction working hours.

### **Control of dust emissions**

17.—(1) No stage of the authorised development is to commence until a written scheme for the management and mitigation of dust emissions has been submitted to and approved by the relevant planning authority in relation to that stage.

(2) The approved scheme for the management and mitigation of dust emissions must be implemented before any stage of the authorised development can commence, and maintained during the construction, operation and decommissioning of the authorised development.

### **Accumulations and deposits**

18.—(1) No stage of the authorised development is to commence until a written scheme for the management of any accumulations and deposits whose effects may be harmful or visible or otherwise noticeable from outside the Order limits has been submitted to and approved by the relevant planning authority in relation to that stage.

(2) The approved scheme for the management of accumulations and deposits must be implemented before and maintained during the construction, operation and decommissioning of the authorised development.

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

19. Any land within the Order limits which is used temporarily for construction is to be reinstated to its former condition, or such condition as the relevant planning authority may approve, within

six months of completion of the construction of the authorised development, or such further time as may be approved in writing by the relevant planning authority.

### **Requirement for written approval**

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

### **Amendments to approved details**

**21.** With respect to any Requirement which requires the authorised development to be carried out in accordance or general accordance with the details approved by the relevant planning authority, the details as so approved are to be taken to include any amendments that may subsequently be lawfully approved in writing by the relevant planning authority.

## SCHEDULE 3

Articles 3 and 22

Modification of compensation and compulsory purchase enactments for creation of new rights

### **Compensation enactments**

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

### **Modification of the Land Compensation Act 1973**

**2.—(1)** Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(17) is to have effect subject to the modifications set out in sub-paragraph (2).

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

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

### **Application of the 1965 Act**

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

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(17) 1973 c. 26. Section 20 was amended by subsection (6) and (12) of section 146 of, and Schedule 13 to, the Road Traffic Regulation Act 1984 (c. 27). Subsection (10) of section 20 was repealed by section 343(3) of, and Schedule 25 to, the Highways Act 1980 (c. 66) and subsection (11) was repealed by section 155 of, and Schedule 25 to, the Rent Act 1977 (c. 42). Section 44 was amended by Schedule 24 to the Highways Act 1980 (c. 66), by section 67(1) and Schedule 7 to the Gas Act 1986 (c. 44), and Schedule 1 to the Water Consolidation (Consequential Provisions) Act 1991 (c. 60). There are other amendments to the 1973 Act which are not relevant to this Order.

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act is to apply 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 in case of severance) there is to be substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired 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 (other 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 or building 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 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 interest, and—
  - (i) where that land consists of a house or building, that the right cannot be purchased without material detriment to that land; or
  - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the National Grid (King’s Lynn B Power Station Connection) Development Consent Order 2013 (“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 is to 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);
- (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 to be 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 is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) is to be 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 (which is to be 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 is to be modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc) is to apply 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 to be 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 4

Article 10(1)

##### Streets subject to street works

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Subject to street works within the Order limits</i>
Borough of King's Lynn and West Norfolk	Cycleway/Footpath No 8; and North Sea Bank

#### SCHEDULE 5

Article 11(4)

##### Streets/rights of way to be temporarily closed

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street or public right of way to be temporarily closed, altered or diverted</i>	<i>(3)</i> <i>Extent of temporary closure, alteration or diversion as shown on the rights of way plans</i>
Borough of King's Lynn and West Norfolk	Cycleway / Public Footpath No 8 and the North Sea Bank	Between Points A and B

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street or public right of way to be temporarily closed, altered or diverted</i>	<i>(3)</i> <i>Extent of temporary closure, alteration or diversion as shown on the rights of way plans</i>
Borough of King's Lynn and West Norfolk	High Road	Between Points C and D
Borough of King's Lynn and West Norfolk	Public Footpath No 26	Between Points E and F
Borough of King's Lynn and West Norfolk	Bridleway/Public Footpath No 28	Between Points G and H
Borough of King's Lynn and West Norfolk	Public footpath No 27	Between Points J and K

## SCHEDULE 6

Article 12(1)(a)

## Access to works

	<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Access to works</i>
New permanent access	Borough of King's Lynn and West Norfolk	Create new permanent access from North Sea Bank and Cycleway/Public Footpath No 8 into the substation to be constructed as part of the approved King's Lynn B Power Station as shown on drawing A1/PTD/6320/008/Rev B
New temporary access	Borough of King's Lynn and West Norfolk	Create new temporary access to the east of Willows Roundabout at the junction of Willows Road, Saddlebow Road (also known as High Road), Low Road and High Road as shown on drawing A1/PTD/6320/009/Rev A
Improve existing accesses	Borough of King's Lynn and West Norfolk	Improve the access onto Saddlebow Road (also known as High Road) to the north of Willows Roundabout as shown on drawing A1/PTD/6320/015/Rev B  Improve the three accesses onto High Road as shown on drawing A1/PTD/6320/008/Rev B

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Access to works</i>
	Improve two accesses onto Thiefgate Lane as shown on drawing A1/PTD/6320/013/Rev B

## SCHEDULE 7

Article 25(1)(a)(i) and (3)(a)

## Land of which temporary possession may be taken

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
Borough of King's Lynn and West Norfolk	Plots 1, 4, 6, 8, 18, 20, 24, 33, 36, 42, 53, 53a, 53b, 55, 55a, 57, 66 and 66a	Installation of the authorised development (comprised within Class 1 new rights specified in the book of reference)
	Plots 65a, 65b, 65c, 67, 67a, 67b, 68, 68a, 68b, 69, 69a, 69b, 70, 71a, 72, 72a	Installation incidental to and to facilitate the authorised development (comprised within Class 5 new rights specified in the book of reference)
	Plots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 15a, 16, 17, 18, 19, 20, 23, 24, 26, 30, 31, 32, 33, 34, 35, 36, 41, 42, 48, 49, 49a, 51, 51a, 51b, 52, 52a, 52b, 53, 53a, 53b, 54, 54a, 55, 55a, 56, 57, 65, 65c, 65d, 66, 66a, 67, 68, 69, 70 and 72	Construction associated with the installation of the authorised development (comprised within Class 2 new rights specified in the book of reference)
	Plots 14, 21, 22, 25, 27, 28, 29, 37, 38, 39, 40, 43, 43a, 44, 45, 46, 46a, 47, 50, 58, 58a, 58b, 59, 60, 61, 62, 63, 64, 65b, 71, 71a, 73, 74, 75, 76, 77 and 78	Access associated with the installation and construction of the authorised development (comprised within Class 3 and Class 7 new rights specified in the book of reference)
	Plots 67a, 67b, 68a, 68b, 69a and 72a	Access incidental to and to facilitate the installation of the authorised development (comprised within Class 7 new rights specified in the book of reference)
	Plots 1, 2, 3, 4, 6, 7, 8, 49, 51, 51b, 52, 52b, 53, 53b, 54, 55, 65, 65d and 66	Landscaping associated with the installation and construction of the authorised development (comprised within Class 4 new

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(1) Area	(2) Number of land shown on land plan	(3) Purpose for which temporary possession may be taken (rights specified in the book of reference)
	Plots 73, 74, 75 and 76	Scaffolding and temporary structures associated with the installation and construction of the authorised development (comprised within Class 6 new rights specified in the book of reference)
	Plots 67a, 67b, 68a, 68b, 69a and 72a	Scaffolding and temporary structures incidental to and to facilitate the installation of the authorised development (comprised within Class 6 new rights specified in the book of reference)

## SCHEDULE 8

Articles 27 and 31

### Protective provisions

## PART 1

### For the protection of electricity, gas, water and sewerage undertakers

**1.—(1)** For the protection of the statutory undertakers referred to in this Part of this Schedule the following provisions are to, unless otherwise agreed in writing at any time between the statutory undertaker and the undertaker concerned, have effect.

**(2)** In this Part of this Schedule—

“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 an electricity undertaker, electric lines or electrical plant (as defined in section 64 of the Electricity Act 1989<sup>(18)</sup>), belonging to or maintained by that electricity undertaker for the purposes of electricity supply;
- (b) in the case of a gas undertaker, any gas mains, pipes or other apparatus belonging to or maintained by that gas undertaker for the purposes of gas supply;
- (c) in the case of a water undertaker, water mains, pipes or other water apparatus belonging to or maintained by that water undertaker for the purposes of water supply; and

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**(18)** 1989 c. 29. The definition of “electrical plant” in section 64 was amended by section 108 of and Schedule 6 to the Utilities Act 2000 (c. 27). Part 1 of the Act was amended by Part 4 of the Utilities Act. There are other amendments to the Act not relevant to this Order.



- (d) in the case of a sewerage undertaker—
- (i) any drain or works vested in the undertaker under the Water Industry Act 1991(19); and
  - (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; and

“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(20);
  - (c) a water undertaker within the meaning of the Water Industry Act 1991; and
  - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

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

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

4.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus is not to be removed under this Part of this Schedule and any right of a statutory undertaker to maintain that apparatus in that land is not to 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 or under 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 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 34, and after the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (3),

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(19) 1991 c. 56.

(20) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the 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) is to authorise 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.

5.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 4(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under that paragraph, the statutory undertaker must submit to the undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker shall be 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, sub-paragraphs (1) to (4) are to apply as if the removal of the apparatus had been required by the undertaker under paragraph 4(2).

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

(6) The undertaker is not to be 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.

6.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a statutory undertaker the proper and reasonable expenses reasonably incurred by that statutory undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus.

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

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 34 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the 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 is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be 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) is to, 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.

## PART 2

### For the protection of National Grid Gas plc

For the protection of National Grid Gas plc (Company Number 2006000) (“NG Gas”) the undertaker and NG Gas have entered into an agreement dated 24 June 2013 containing provisions for the protection and benefit of NG Gas in relation to the exercise operation and use of new rights over the Order land in which NG Gas has rights. These provisions are to have effect unless otherwise varied or amended in writing between the undertaker and NG Gas.

## PART 3

### For the protection of Network Rail Infrastructure Limited

For the protection of Network Rail Infrastructure Limited and any associated Undertaker of Network Rail Infrastructure Limited which holds property for railway purposes (and for the purpose of this definition “associated Undertaker” means any undertaker which is (within the meaning of sections 1161 and 1162 of the Companies Act 2006<sup>(21)</sup>) the parent undertaking of Network Rail Infrastructure Limited, the subsidiary undertaking of Network Rail Infrastructure Limited or another subsidiary undertaking of the holding undertaking of Network Rail Infrastructure Limited) the undertaker and Network Rail Infrastructure Limited have entered into an agreement dated 20 May 2013 containing provisions for the protection and benefit of Network Rail Infrastructure Limited

(21) 2006 c. 46. There are amendments to the Act which are not relevant to this Order.

and any such associated Undertaker in relation to the exercise operation and use of new rights over the Order land owned, operated and managed by Network Rail Infrastructure Limited and any such associated Undertaker. These provisions are to have effect unless otherwise varied or amended in writing between the undertaker and Network Rail Infrastructure Limited.

## PART 4

### For the protection of operators of electronic communications code networks

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

2. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003<sup>(22)</sup>;

“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;

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

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

“electronic communications code network” means—

- (a) so much of an electronic communications network or 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, or paragraph 17 of Schedule 18 to, the 2003 Act; and

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

3. The exercise of the powers of article 27 (statutory undertakers) are subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984<sup>(23)</sup>.

4.—(1) Subject to sub-paragraphs (2) and (3), if as the result of the authorised development or their construction, or of any subsidence resulting from any of those works 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) the undertaker must bear and pay the cost reasonably and properly incurred by the operator in making good such damage.

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

(3) Any difference arising between the undertaker and the operator under this paragraph is to be referred to and settled by arbitration under article 34 (arbitration).

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<sup>(22)</sup> 2003 c. 21. There are amendments to the Act which are not relevant to this Order.

<sup>(23)</sup> 1984 c. 12. There are amendments to the Act which are not relevant to this Order.

5. This Part of this Schedule does not apply to—
- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
  - (b) any damage caused by electro-magnetic interference arising from the construction or use of the authorised development.
6. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## SCHEDULE 9

Article 35(2)

### Discharge of requirements

#### Applications made under requirement

1. Where an application has been made to the relevant planning authority for any agreement or approval required pursuant to a Requirement included in this Order, the relevant planning authority must give notice to the undertaker of their decision including the reasons on the application, within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the authority; or
- (b) such longer period as may be agreed by the undertaker and the relevant planning authority.

#### Further information

2.—(1) Where an application has been made under paragraph 1 the relevant planning authority shall have the right to request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) If the relevant planning authority considers further information is needed, and the requirement does not specify that consultation with a requirement consultee is required, it must, within 14 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement indicates that consultation must take place with a requirement consultee the relevant planning authority must issue the consultation to the requirement consultee within 5 business day of receipt of the application and must notify the undertaker in writing specifying any further information requested by the requirement consultee within 3 business day of receipt of such a request and in any event within 21 business days of receipt of the application.

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

#### Appeals

3. The undertaker may appeal in the event that—
- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions; or
  - (b) the relevant planning authority does not give notice of its decision to the undertaker within the time period specified in paragraph 1;

and any appeal must be made within 42 business days following the occurrence of any of the events in sub-paragraphs (a) and (b).

### **Appeal process**

4.—(1) Any appeal under this Schedule shall take place by written representations only. The appeal process shall be as follows—

- (a) the undertaker must submit to the Secretary of State a copy of the application submitted to the relevant planning authority and any supporting documents which the undertaker may wish to provide (“the appeal documentation”) and must on the same day provide copies of the appeal documentation to the relevant planning authority and any requirement consultee;
- (b) as soon as is practicable after receiving the appeal documentation, the Secretary of State shall appoint a person to determine the appeal (“the appointed person”) and shall notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
- (c) the relevant planning authority and the requirement consultee (if any) must submit written representations to the appointed person in respect of the appeal within 10 business days of the date on which the appeal parties are notified of the appointed person under paragraph (b) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties must make any counter-submissions to the appointed person within 10 business days of receipt of written representations pursuant to paragraph (c); and
- (e) the appointed person shall make a decision and notify it to the appeal parties, with reasons, as soon as practicable.

(2) The appointment of the person pursuant to sub-paragraph (1)(b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

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

(4) Any further information required pursuant to sub-paragraph (3) must be provided to the appointed person and the other appeal parties on or before the date specified by the appointed person. Any written representations concerning matters contained in the further information must be provided to the appointed person and the other appeal parties within 10 business days of that date.

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

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance and must state in writing the reasons for any decision.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits set by the appointed person under this paragraph.

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

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

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Schedule 2 to this Order as if it had been given by the relevant planning authority.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person is to have regard to Communities and Local Government Circular 03/2009 or any circular or guidance which may from time to time replaces it.

## **Fees**

**5.—**(1) Where an application is made to the relevant planning authority for agreement or approval in respect of a requirement a fee of £97.00 is to be paid to it.

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

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within the period determined under sub-paragraph (1);

unless within that period the undertaker agrees in writing that the fee is to be retained by the relevant planning authority and credited in respect of a future application.

## **Interpretation of Schedule 9**

**6.** In this Schedule—

“the appeal parties” means the relevant planning authority, the requirement consultee and the undertaker;

“business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971<sup>(24)</sup>;

“requirement consultee” means any body named in a Requirement which is the subject of an appeal as a body to be consulted by the relevant planning authority in discharging that Requirement.

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(24) 1971 c. 80. There are amendments to this Act which are not relevant to this Order.

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

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## EXPLANATORY NOTE

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

This Order grants development consent for, and authorises National Grid Electricity Transmission plc to construct and maintain, a 400 kV overhead line connection from a new substation serving the King's Lynn B 981 MW Combined Cycle Gas Turbine power station to the existing Norwich-Walpole 400 kV overhead line. For the purposes of the development that it authorises, National Grid Electricity Transmission plc is authorised by this Order compulsorily to acquire new rights in land as well as to override interests, rights and restrictions. 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 32 (certification of plans etc) of this Order may be inspected free of charge at Borough Council of King's Lynn and West Norfolk, King's Court, Chapel Street, King's Lynn, PE30 1EX.