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STATUTORY INSTRUMENTS

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**2014 No. 3328**

**INFRASTRUCTURE PLANNING**

**The Wellington C Gas Pipeline Order 2014**

*Made* - - - - *16th December 2014*

*Coming into force* - - *7th January 2015*

An application has been made to the Secretary of State for an order granting development consent under section 37 of the Planning Act 2008(1) (the “2008 Act”).

The application has been examined by a single appointed person who has made a report to the Secretary of State under section 83(1) of the 2008 Act.

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

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

Accordingly, the Secretary of State, in exercise of the powers in sections 114 and 120 of the 2008 Act, makes the following Order:

**PART 1**

**PRELIMINARY**

**Citation and commencement**

**1.** This Order may be cited as the Wellington C Gas Pipeline Order 2014 and comes into force on 7th January 2015.

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(1) [2008 c.29](#). Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13 to, the Localism Act [2011 \(c.20\)](#). Section 83(1) was amended by paragraph 35 of that Schedule. Section 104(2) was amended by paragraph 49 of that Schedule and section 58 of the Marine and Coastal Access Act [2009 \(c.29\)](#). Section 114 was amended by paragraph 55 of Schedule 13 to the Localism Act 2011. Section 120 was amended by section 140 of, and paragraph 60 of Schedule 13 to, that Act.

(2) [S.I. 2009/2263](#); relevant amending instruments are [S.I. 2012/635](#) and [2012/787](#).

## Interpretation

### 2.—(1) In this Order—

“1961 Act” means the Land Compensation Act 1961**(3)**;

“1965 Act” means the Compulsory Purchase Act 1965**(4)**;

“1980 Act” means the Highways Act 1980**(5)**;

“1990 Act” means the Town and Country Planning Act 1990**(6)**;

“1991 Act” means the New Roads and Street Works Act 1991**(7)**;

“1997 Regulations” means the Hedgerows Regulations 1997**(8)**;

“2008 Act” means the Planning Act 2008;

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

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

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

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

“carriageway” has the same meaning as in the 1980 Act**(9)**;

“commence” means begin to carry out any material operation (as defined in section 56(4) of the 1990 Act**(10)**) forming part of the authorised development other than operations consisting of—

- (a) ecological or archaeological investigations;
- (b) investigations for the purpose of assessing ground conditions;
- (c) remedial work in respect of any contamination or other adverse ground conditions;
- (d) the diversion and laying of services;
- (e) the erection of any temporary means of enclosure;
- (f) the temporary display of site notices or advertisements; and
- (g) for the purpose of the operations referred to in sub-paragraphs (a) to (f), the cutting of vegetation, other than the cutting of vegetation authorised by article 32 (felling or lopping of trees, etc.);

and “commencement” must be construed accordingly;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act**(11)**;

“electronic transmission” means a communication transmitted—

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

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**(3)** 1961 c.33.

**(4)** 1965 c.56.

**(5)** 1980 c.66.

**(6)** 1990 c.8.

**(7)** 1991 c.22.

**(8)** SI 1997/1160, amended by section 73(2) of the Countryside and Rights of Way Act 2000 (c.37) and S.I. 2003/2155, 2006/1177, 2009/1307 and 2013/755.

**(9)** “Carriageway” is defined in section 329.

**(10)** Section 56(4) was amended by paragraph 10 of Schedule 7 to the Planning and Compensation Act 1991 (c.34).

**(11)** Section 134 was amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011.

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

“highway” has the same meaning as in the 1980 Act(12);

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

“limits of deviation” means the areas shown on the works plans (within a broken red line) and referred to in article 7 (limits of deviation);

“local highway authority” means Staffordshire County Council or Derbyshire County Council as appropriate for the area in which the land to which the provisions of this Order apply is situated;

“maintain” (except as provided in Part 5 of Schedule 9) includes inspect, maintain, adjust, alter, repair, test, cleanse, re-lay, divert (in accordance with articles 5 (maintenance and diversion of authorised development) and 7 (limits of deviation)), make safe, decommission, reconstruct, demolish, abandon, replace, remove and improve the authorised development or any of its parts (but not so as to vary from the description of the authorised development in Schedule 1); and any derivative of “maintain” must be construed accordingly;

“National Grid Electricity” means National Grid Electricity Transmission plc (company registration number 02366977);

“National Grid Gas” means National Grid Gas plc (company registration number 02006000);

“NG works” means those works to be constructed, owned and operated by National Grid Gas and described in Part 1 of Schedule 1 as (a) Works No.2 (shown on sheet 1 of the works plans) and (b) those works within Works No.3 which comprise National Grid Gas’s part of the above-ground installation, and are shown within the turquoise bounded area on the Yoxall AGI plan;

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

“Order limits” means the limits (including the limits of deviation, the works limits and any additional land to be used) shown by a blue line on the works 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(13);

“relevant planning authority” means South Derbyshire District Council or East Staffordshire Borough Council as appropriate for the area in which the land to which the provisions of this Order apply is situated;

“Requirement” means a Requirement set out in Part 2 of Schedule 1; and a reference to a numbered Requirement is a reference to the Requirement set out in the paragraph of the same number in that Part;

“statutory undertaker” means any person falling within sections 127(8) and 138(4A) of the 2008 Act(14) or who has the benefit of the protective provisions in Schedule 9;

“street” means a street within the meaning of section 48 of the 1991 Act(15), 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(16);

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(12) “Highway” is defined in section 328.

(13) 1981 c.67. The definition was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c.34). Paragraph 1(5) of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c.21).

(14) Section 138(4A) was inserted by section 23(4)(b) of the Growth and Infrastructure Act 2013 (c.27).

(15) Section 48 was amended by section 124(2) of the Local Transport Act 2008 (c.26).

(16) “Street authority” is defined in section 49.

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

“undertaker” means RWE Generation UK plc<sup>(17)</sup> (company registration number 03892782) or a successor body, or any other person, to whom RWE Generation UK plc transfers or grants any or all of the benefit of this Order in accordance with article 9 (consent to transfer benefit of Order);

“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;

“works limits” means the limits of land shown by a broken green line on the works plans within which the authorised development can be carried out and maintained;

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

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

“Yoxall AGI site” means the land hatched blue on sheet 1 of the works plans and shown on the Yoxall AGI plan.

(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.

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

(5) References in this Order to a numbered Work are references to a work numbered in Part 1 of Schedule 1.

### **Application and modification of legislative provisions**

**3.—**(1) Regulation 6(1) of the 1997 Regulations applies to the development consent granted by this Order except that it is modified so as to read for the purposes of this Order only as if there were inserted after sub-paragraph (e) the following—

“(ea) for the carrying out of development for which development consent has been granted under the Planning Act 2008.”

(2) Section 78(1) of the 1990 Act<sup>(18)</sup> applies to the development consent granted by this Order and to the Requirements except that it is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (b) the following—

“(ba) refuse an application for any consent, agreement or approval of that authority required by a requirement imposed on a grant of development consent or contained in a development consent order, or grant it subject to conditions;

(bb) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on any consent, agreement or approval of that authority given pursuant to a requirement imposed on a grant of development consent or contained in a development consent order;

(bc) fail to give notice to the applicant of their decision on an application of the kind referred to in (ba) or (bb), within the time prescribed by a development order or such extended time as may at any time be agreed in writing between the applicant and the planning authority; or”.

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<sup>(17)</sup> The registered office of RWE Generation UK plc is Windmill Hill Business Park, Whitehall Way, Swindon, Wiltshire SN5 6PB.

<sup>(18)</sup> Section 78 was amended by section 43(2) of the Planning and Compulsory Purchase Act 2004 (c.5), paragraph 3(b) of Schedule 10 to the Planning Act 2008, section 123(3) of, and paragraph 11 of Schedule 12 to, the Localism Act 2011 and paragraph 8 of Schedule 1 to the Growth and Infrastructure Act 2013.

(3) Sections 78 and 79 of the 1990 Act<sup>(19)</sup> have effect in relation to any appeal under section 78(1) as so applied.

(4) Regulation 16 of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012<sup>(20)</sup> applies to any application to discharge a Requirement as if the Requirement were a condition attached to the grant of planning permission.

(5) Any orders, rules or regulations that apply to applications pursuant to conditions or the subject matter of section 78 of the 1990 Act apply to any application or appeal made under that section as modified by this article, insofar as those provisions are not inconsistent with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 and any orders, rules or other regulations made under the 2008 Act.

(6) Appeals by the undertaker under section 78 of the 1990 Act as modified by this article must be dealt with by the Secretary of State and appropriate Minister as if the appeal were made by a statutory undertaker against a determination of an application to which section 266(1) of the 1990 Act applies, provided that the undertaker making the appeal holds a licence under section 6 of the Electricity Act 1989<sup>(21)</sup>.

## PART 2

### PRINCIPAL POWERS

#### **Development consent granted by Order**

4. 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.

#### **Maintenance and diversion of the authorised development**

5.—(1) The undertaker may at any time maintain the authorised development within the works limits and, in so far as a diversion would not be contrary to section 21 of the 2008 Act, divert the authorised development within the limits of deviation.

(2) Any diversion of the authorised development is subject to the provisions of this Order and the Requirements.

(3) No maintenance works whose likely significant effects on the environment are not described in the environmental statement may take place, except for maintenance works associated with an emergency.

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

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

#### **Limits of deviation**

7. In carrying out, maintaining or diverting the authorised development, the undertaker may—

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<sup>(19)</sup> Section 79 was amended by section 18 of, and paragraph 19 of Schedule 7 to, the Planning and Compensation Act 1991 (c.34) and by paragraph 4 of Schedule 10 to the Planning Act 2008.

<sup>(20)</sup> S.I. 2012/2920, to which there are amendments not relevant to this Order.

<sup>(21)</sup> 1989 c.29. Section 6 was amended by section 30 of the Utilities Act 2000 (c.27), sections 136 and 145 of, and Schedule 23 to, the Energy Act 2004 (c.20), regulation 5 of S.I. 2011/2704 and article 6 of S.I. 2012/2400.

- (a) deviate Works No. 1, 2, 3(f), 3(k), 4, 5 and 6 laterally from the lines or situations of the authorised development shown on the works plans within the extent of the limits of deviation shown on those plans; and
- (b) deviate Works No. 1 and 2 vertically—
  - (i) upwards to a limit of not less than 1.1 metres below the surface of the ground; and
  - (ii) to any extent downwards as may be found to be necessary or practical to a maximum depth of 70 metres below the surface of the ground,
 except that sub-paragraph (i) does not apply to those parts of Works No. 1 and 2 that are built within the Yoxall AGI site, where such works may deviate upwards to a limit of 2.8 metres above ground level;
- (c) deviate or place Works No. 3, 4, 5 and 6 vertically upwards or above ground level to the height limits set for each of these works in Part 1 of Schedule 1.

### **Benefit of Order**

8. Subject to article 9 (consent to transfer benefit of Order), this Order is for the benefit of the undertaker.

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

- 9.—(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 in writing between the undertaker and the transferee; or
  - (b) grant to another person (the “lessee”) for a period agreed in writing 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,

except where paragraph (3) applies, in which case no such consent is required.

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

(3) This paragraph applies to a transfer or grant to National Grid Gas of any part of the benefit of the provisions of this Order and any related statutory rights which relate to, or may be necessary or expedient for, the construction, operation, maintenance and diversion of the NG works or any works carried out pursuant to Part 5 of Schedule 9.

## **PART 3**

### **STREETS**

#### **Street works**

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

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in or under the street;

- (d) maintain apparatus in or under the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

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

(3) Sections 54 to 106 of the 1991 Act<sup>(22)</sup> apply to any street works carried out under paragraph (1).

(4) In this article, “apparatus” has the same meaning as in Part 3 of the 1991 Act<sup>(23)</sup>.

### **Public rights of way**

**11.**—(1) The undertaker may create an alternative public right of way to the section of footpath named the Yoxall 59 footpath (shown by a broken orange line between the points A and C on the Yoxall AGI plan) between the points A, B and C (shown by a broken purple line on the Yoxall AGI plan).

(2) With effect from the date of certification by the local highway authority that the agreed alternative right of way has been created in accordance with the implementation plan and specification approved under Requirement 8, the original right of way (shown by the broken orange line between the points A and C on the Yoxall AGI plan) is extinguished.

### **Access to works**

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

- (a) form and lay out means of accesses or improve existing means of access in the indicative locations specified in columns (1) and (2) of Schedule 3 (access to works) as shown coloured pink on sheets 1 to 7, 9 and 10 of the works plans; and
- (b) form and lay out such other means of access or improve existing means of access at such locations within the works limits as the undertaker reasonably requires for the purposes of the authorised development.

### **Agreements with street authorities**

**13.**—(1) A street authority and the undertaker may enter into agreements with respect to the carrying out in or under the street of any of the works referred to in article 10(1) (street works).

(2) Such an agreement may, without limiting paragraph (1),—

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

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<sup>(22)</sup> A number of these provisions are amended, including by the Traffic Management Act 2004 (c.18).

<sup>(23)</sup> “Apparatus” is defined in sections 89(3) and 105(1).



## 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 works limits, make openings into, and connections with, that watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) must be determined as if it were a question arising under section 106 of the Water Industry Act 1991<sup>(24)</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 must not be unreasonably withheld.

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

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to observe 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) This article does not authorise a groundwater activity or a water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2010<sup>(25)</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, a harbour authority within the meaning of section 57 of the Harbours Act 1964<sup>(26)</sup> (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker<sup>(27)</sup> 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.

#### Authority to survey and investigate land

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

- (a) survey or investigate the land;

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<sup>(24)</sup> 1991 c.56. Section 106 was amended by section 35(8)(a) of the Competition and Service (Utilities) Act 1992 (c.43) and by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

<sup>(25)</sup> S.I. 2010/675. “Groundwater activity” is defined in paragraph 3 of Schedule 22; and “water discharge activity” in paragraph 3 of Schedule 21.

<sup>(26)</sup> 1964 c.40.

<sup>(27)</sup> “Sewerage undertaker” is defined in Schedule 1 to the Interpretation Act 1978 (c.30).



- (b) without limiting 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 limiting sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

This is limited to the right to carry out the surveys and investigations specified in column (2) of Schedule 4 (land in which surveys and investigations may be carried out) over the land specified in column (1) of that Schedule.

(2) No land may be entered or equipment placed or left on or removed from the land under sub-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 on entering the land, produce written evidence of the person's authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

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

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

but such consent must not 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, under Part 1 (determination of questions of disputed compensation) of the 1961 Act(28).

## PART 5

### POWERS OF ACQUISITION

#### **Compulsory acquisition of existing rights in land**

**16.—**(1) The undertaker may acquire compulsorily the existing rights in so much of the Order land within the works limits (including for the avoidance of doubt the subsoil) as are required for the authorised development or to facilitate, or are incidental to, it and as are 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 the land acquired under paragraph (1) or any part of it is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) is discharged from all rights, easements, liberties, privileges, advantages, restrictions, covenants, trusts and incidents to which it was previously subject.

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

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(28) Sections 1 and 4 were amended, and sections 2 and 3 repealed, by paragraphs 37 to 39 of [S.I. 2009/1307](#).

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

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

- (a) no notice to treat may be served under Part 1 of the 1965 Act<sup>(29)</sup>; and
- (b) no notice or declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981<sup>(30)</sup> as applied by article 21 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 24 (temporary use of land for carrying out authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period if the land was entered and possession was taken before the end of that period.

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

18.—(1) The undertaker may create and acquire compulsorily new rights over those parts of the Order land specified in column (1) of Schedule 5 (land in which only new rights, etc. may be acquired) as may be required for the purpose specified in relation to that land in column (2) of that Schedule or as may be required for facilitating the construction of, or are incidental to, the authorised development.

(2) The undertaker may also impose the restrictive obligations specified in column (3) of Schedule 6 (land over which restrictive obligations and rights of support are required) over the Order land specified in column (2) of that Schedule.

(3) 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 over which any new rights are acquired is discharged from all rights, easements, liberties, privileges, advantages, restrictions, covenants, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

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

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

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

19.—(1) The carrying out or use of development authorised by this Order and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), 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) The interests and rights to which this article applies include any easements, liberties, privileges and advantages annexed to land and adversely affecting other land, including any natural right to support, and include restrictions as to the user of the land arising by virtue of a contract having that effect or any other covenants, trusts or incidents.

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<sup>(29)</sup> Section 5 (notice to treat, and untraced owners) of the Compulsory Purchase Act 1965 was amended by section 67 of the Planning and Compensation Act 1991 and by paragraph 60 of Schedule 1 to [S.I. 2009/1307](#).

<sup>(30)</sup> [1981 c.66](#).

- (3) Compensation in respect of any interference or breach pursuant to this article—
- (a) is payable under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance)(**31**); and
  - (b) will be assessed subject to section 10(2) of the 1965 Act(**32**), which applies by virtue of section 152(5) of the 2008 Act; and

any rule or principle applied to the construction of section 10 of the 1965 Act will be applied to the construction of this paragraph (with any necessary modifications).

(4) Nothing in this article is to be construed as authorising any act or omission on the part of any person that is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1).

### **Private rights of way**

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

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

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the limits of land that may be acquired shown on the land plans, is required for the purposes of this Order are extinguished on the appropriation of the land by the undertaker for any of those purposes.

(3) Subject to the provisions of this article, all private rights of way over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

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

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers, etc.)(**33**) or article 27 (statutory undertakers) applies.

- (6) Paragraphs (1) to (3) have effect subject to—
- (a) any notice given by the undertaker before—
    - (i) the completion of the acquisition of the land;
    - (ii) the undertaker’s appropriation of it;
    - (iii) the undertaker’s entry onto it; or
    - (iv) the undertaker’s taking temporary possession of it,
- provided that any or all of those paragraphs do not apply to any right of way specified in the notice; and

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(31) Section 152 was amended by paragraph 293 of Schedule 1 to [S.I. 2009/1307](#).

(32) Section 10 was amended by paragraph 63 of Schedule 1 to [S.I. 2009/1307](#) and paragraph 13 of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11).

(33) Section 138 was amended by section 23(4) of the Growth and Infrastructure Act 2013.

- (b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.
- (7) If any such agreement as is referred to in paragraph (6)(b)—
  - (a) is made with a person in or to whom the right of way is vested or belongs; and
  - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

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

**21.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981<sup>(34)</sup> applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, has effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there is substituted—

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

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

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

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

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

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds 1 month.”

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

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

(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 omitted.

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

### **Acquisition of subsoil**

**22.**—(1) In connection with the compulsory acquisition of the existing rights referred to in article 16 (compulsory acquisition of existing rights in land) and the compulsory creation and acquisition of the new rights referred to in article 18 (compulsory acquisition of rights, etc.) and article 27 (statutory

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(34) 1981 c.66.

undertakers), the undertaker may acquire compulsorily such rights in the subsoil as may be required for any purpose for which the previously-mentioned rights may be acquired under that provision for the purposes of the authorised development.

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

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

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

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

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

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

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

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

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

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

- (a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in column (3) of that Schedule;
- (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 on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owner of the land, remain in possession of any plot specified in Schedule 8 after the expiration of 1 year from the date that the authorised development has been completed in that plot unless notice of entry has been given under section 11 of the 1965 Act<sup>(35)</sup> or the land is the subject of a general vesting declaration.

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<sup>(35)</sup> Section 11 was amended by paragraph 14(3) of Schedule 4 to the Acquisition of Land Act 1981 (c.67), Part 1 of Schedule 1 to the Housing (Consequential Provisions) Act 1985 (c.71), paragraph 12(1) of the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1) and paragraph 64 of Schedule 1 to S.I. 2009/1307.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to replace a building removed under this article.

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

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

(7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1) except that the undertaker is not precluded from acquiring new rights over any part of that land including the subsoil under article 18 (compulsory acquisition of rights, etc.) and article 22 (acquisition of subsoil).

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

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority)<sup>(36)</sup> applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land or rights over land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

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

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

**25.**—(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 works 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, except as provided in paragraph (12).

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

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<sup>(36)</sup> Section 13 was amended by section 139 of, and paragraph 28(2) of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c.15).

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

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

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

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation 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 required to acquire the land or any interest in it.

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

(11) In this article, "maintenance period", in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

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

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

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

### **No double recovery**

**26.** Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

### **Statutory undertakers**

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

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



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

### Recovery of costs of new connections

**28.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 27 (statutory undertakers), any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but, where such a sewer is removed under article 27, any person who is—

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

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

(3) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003<sup>(37)</sup>; and

“public utility undertaker” has the same meaning as in the 1980 Act<sup>(38)</sup>.

### Railway and navigation crossings

**29.**—(1) Subject to the following provisions of this article, the undertaker may not under article 10 (street works) break up or open a street where the street, not being a highway maintainable at the public expense (within the meaning of the 1980 Act<sup>(39)</sup>),—

- (a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or  
 (b) forms part of a level crossing belonging to any such undertakers, to such an authority or to any other person,

except with the consent of the undertakers, authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Paragraph (1) does not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act<sup>(40)</sup>.

(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but must not be unreasonably withheld.

(4) In this article, “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.

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<sup>(37)</sup> 2003 c.21.

<sup>(38)</sup> “Public utility undertakers” is defined in section 329.

<sup>(39)</sup> “Highway maintainable at the public expense” is defined in section 329.

<sup>(40)</sup> “Emergency works” is defined in section 52.

## PART 6

### MISCELLANEOUS AND GENERAL

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

**30.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(41)</sup> (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within section 79(1)(g) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance), no order may be made, and no fine may be imposed, under section 82(2) of that Act<sup>(42)</sup> if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and 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) of the Control of Pollution Act 1974<sup>(43)</sup> or a consent given under section 61 (prior consent for work on construction site) or section 65 (noise exceeding registered level) of that Act; or
- (b) is a consequence of the use, construction or maintenance of the authorised development and cannot reasonably be 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) of the Control of Pollution Act 1974 and section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded) of that Act do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

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

**31.** Development consent granted by this Order must 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, etc.**

**32.**—(1) The undertaker may at any time fell or lop any tree or shrub within or overhanging land within the works limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

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

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

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<sup>(41)</sup> 1990 c.43. Section 82(1) was amended by paragraph 6 of Schedule 17 to the Environment Act 1995 (c.25).

<sup>(42)</sup> Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c.40) and paragraph 6 of Schedule 17 to the Environment Act 1995.

<sup>(43)</sup> 1974 c.40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c.55), paragraph 15 of Schedule 15 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995. Section 65 was amended by paragraph 15 of Schedule 15 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995.

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

**33.**—(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 submitted as document reference WCGP 013.3, version 3, June 2014, in the application for this Order;
- (b) the land plans submitted as document reference WCGP 011.1 version 3, June 2014, sheets 1 to 10 in the application for this Order;
- (c) the works plans submitted as document reference WCGP 012.1 version 3, June 2014, sheets 1 to 10 in the application for this Order;
- (d) the Yoxall AGI plan submitted as document reference WCGP 023.1 in the application for this Order and updated to version C, June 2014, drawing reference no. UK/PWLC0233/C;
- (e) the environmental statement submitted as documents reference WCGP 014.1 (chapters), WCGP 014.2 (appendices), WCGP 014.3 (figures), and WCGP 030.013 (addendum, version 2, April 2014) in the application for this Order; and
- (f) any other plans, drawings or documents referred to in this Order,

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

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

### **Arbitration**

**34.** Any difference under any provision of this Order (other than a difference that falls to be determined by the tribunal), 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.

### **Protection of interests**

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

### **Service of notices**

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the written 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>(44)</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—

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(44) 1978 c.30.

- (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 purpose 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 purpose of this Order is served or sent by electronic transmission, the requirement must 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 other document is capable of being accessed by the recipient;
  - (c) the notice or other document is legible in all material respects; and
  - (d) the notice or other document is in a form sufficiently permanent to be used for subsequent reference.
- (6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document, the sender must provide such a copy as soon as reasonably practicable.
- (7) Any consent to the use of electronic 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) the revocation is final and takes 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.
- (10) In this article, “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be served, given or supplied by means of a notice or document in printed form.

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

16th December 2014

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

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## SCHEDULE 1

Articles 2, 3, 4, 5 and 7

## AUTHORISED DEVELOPMENT AND REQUIREMENTS

## PART 1

## AUTHORISED DEVELOPMENT

The authorised development is a nationally significant infrastructure project as described in sections 14 and 21 of the 2008 Act, comprising the construction of an up to 800 millimetre-diameter cross-country pipeline (to be known as the Willington C Gas Pipeline) for the conveyance of gas and covering a distance of approximately 27 kilometres starting from the National Transmission System at Yoxall in the district of East Staffordshire and ending at the proposed Willington C Power Station to be constructed at Willington in South Derbyshire. It includes the laying, placing, use, inspection, maintenance and diversion of the Willington C Gas Pipeline and the works numbered and described below—

**In both East Staffordshire and South Derbyshire***Works No.1 - the Yoxall–Willington Pipe Section*

A high pressure pipeline up to 800 millimetres in diameter with all relevant associated equipment for the transport of gas. Its proposed indicative route is shown by a red line (subject to the limits of deviation in article 7 (limits of deviation)) on works plans sheets 1 to 10.

The indicative start point of the proposed route is shown on sheet 1 of the works plans at the numbered grid reference A (SK13481800). Subject to the limits of deviation in article 7, such start point may deviate within the area defined by the following grid references—

- B - SK13441796
- C - SK13431802
- D - SK13461804
- E - SK13541804
- F - SK13551798

The indicative end point of the proposed route is shown on sheet 10 of the works plans at the numbered grid reference G (SK30402904). Subject to the limits of deviation in article 7, such end point may deviate within the area defined by the following grid references—

- H - SK30112894
- J - SK30132891
- K - SK30172893
- L - SK30342897
- M - SK30992942
- N - SK30922949

**In East Staffordshire***Works No.2 - the NTS Spur Pipeline*

A high pressure gas pipeline (with partially buried valves, control cables and all other relevant associated equipment) up to 800 millimetres in diameter and approximately 120 metres in length, starting at the national transmission system pipeline at the indicative grid reference P (SK13391797) and ending at the indicative start point of Works No.1, shown on sheet 1 of the works plans.

The indicative start point grid reference is P (SK13391797). Subject to the limits of deviation in article 7, such start point may deviate within the area defined by the following grid references—

- R - SK13391795
- S - SK13381797
- T - SK13361798
- V - SK13371800
- W - SK13401798
- X - SK13421795

The indicative end point grid reference is A (SK13481800). Subject to the limits of deviation in article 7, such end point may deviate within the area defined by the following grid references—

- B - SK13441796
- C - SK13431802
- D - SK13461804
- E - SK13541804
- F - SK13551798

### **In East Staffordshire**

#### *Works No.3 - the Yoxall Above-Ground Installation (the “Yoxall AGI”)*

Two secure compounds with equipment for the monitoring and control of gas (together comprising an approximate area of 60 metres x 60 metres with a maximum height of 5 metres), as shown indicatively on the Yoxall AGI plan, to be built within the Yoxall AGI site which is identified by the following numbered co-ordinates—

- north-east corner – 9 (SK13531805)
- south-east corner – 11 (SK13551796)
- south-west corner – 10 (SK13441795)
- north-west corner – 1 (SK13421805)

Works to be carried out within the Yoxall AGI site include—

- (a) security fencing (with a maximum height of 2.8 metres);
- (b) access roadways (including access from the A515), car parking and hard standings;
- (c) power, water and telecommunications connections;
- (d) installation of data transmission equipment;
- (e) installation of instrument kiosks;
- (f) installation of equipment to control (block valves), monitor and transmit flow of gas;
- (g) lighting (with a maximum height of 5 metres);
- (h) landscaping and hedge planting;
- (i) changes to ground levels as may be necessary;
- (j) drainage works as may be necessary;
- (k) installation of an inspection vehicle launch facility (pig launcher).

### **In South Derbyshire**

#### *Works No.4 - the Willington Block Valve*

A partially-buried valve with all relevant associated equipment at which the authorised development is to terminate within the Willington C Power Station site at the indicative grid

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reference G (SK30402904) shown on sheet 10 of the works plans. Subject to the limits of deviation in article 7, the block valve may deviate within the area defined by the following grid references—

- H - SK30112894
- J - SK30132891
- K - SK30172893
- L - SK30342897
- M - SK30992942
- N - SK30922949

The block valve may deviate above ground level to a maximum height of 2 metres and may be securely fenced to a maximum height of 2.8 metres.

**In both East Staffordshire and South Derbyshire**

*Works No.5 - Micro-tunnels and Vertical Shafts*

Micro-tunnels and shafts with all relevant associated equipment including—

- (a) horizontal micro-tunnels not greater than 2.3 metres in internal diameter at a depth not greater than 20 metres below the surface of the ground;
- (b) vertical shafts at either end of the tunnels not greater than 8 metres in internal diameter.

This work may deviate permanently to ground level and may (during construction) temporarily deviate above ground level to a maximum height of 1 metre. It comprises works at the following indicative locations (in addition to other micro-tunnels and shafts that may become necessary in any other locations within the limits of deviation)—

*In East Staffordshire*

- (a) Works 5.1 for the purpose of crossing under the River Swarbourn at the indicative grid reference SK14101816 which can vary subject to the limits of deviation shown on sheet 1 of the works plans.
- (b) Works 5.2 for the purpose of crossing under the dismantled Burton–Hilton railway line at the indicative grid reference SK24662824 which may vary subject to the limits of deviation shown on sheet 8 of the works plans.

*In East Staffordshire and South Derbyshire*

Works 5.3 for the purpose of crossing under the River Dove at the indicative grid reference SK25172826 which can vary subject to the limits of deviation shown on sheet 8 of the works plans.

*In South Derbyshire*

- (a) Works 5.4 for the purpose of crossing under the A38 trunk road at the indicative grid reference SK27992839 which can vary subject to the limits of deviation shown on sheet 9 of the works plans.
- (b) Works 5.5 for the purpose of crossing under the Derby–Stoke railway line at the indicative grid reference SK29402896 which may vary subject to the limits of deviation shown on sheet 10 of the works plans.
- (c) Works 5.6 for the purpose of crossing under the Trent and Mersey Canal and the Derby–Stoke and Derby–Birmingham railway lines at the indicative grid reference SK30262914 which may vary subject to the limits of deviation shown on sheet 10 of the works plans.

**In both East Staffordshire and South Derbyshire**

*Works No.6 - Pipeline Marking*



The marking of Works No. 1 and 2, shown at indicative locations on works plans sheets 1 to 10 and including—

- (a) marker posts at each field boundary and both sides of roads, rivers, canals and railways;
- (b) aerial markers at intervals of approximately 500 metres or closer where required;
- (c) any other marking required to comply with current or future legislation and regulations.

This work may extend above ground level to a maximum height of 2 metres.

Additionally, the authorised development comprises, within the meaning of section 115(1)(b) of the 2008 Act, the following associated development (which falls within the scope of the environmental impact assessment recorded in the environmental statement).

### **In East Staffordshire**

#### *Works No.7 - the Yoxall Temporary Works Compound*

A temporary works compound for use during the construction of the authorised development, located within the land described by the grid references—

- 1 - SK13421805
- 2 - SK13421816
- 3 - SK13501820
- 4 - SK13511812
- 5 - SK13651814
- 6 - SK13661809
- 7 - SK13551802
- 8 - SK13541802
- 9 - SK13531805

and shown hatched green on sheet 1 of the works plans, including—

- (a) temporary car parking, hardstandings and roadways;
- (b) temporary offices and staff welfare portacabins;
- (c) temporary fabrication areas;
- (d) temporary materials, tools and fuel storage areas;
- (e) temporary pipe handling and storage;
- (f) temporary storage of plant and equipment;
- (g) wheel washing facilities;
- (h) temporary lighting.

### **In South Derbyshire**

#### *Works No.8 - the Carriers Road Temporary Works Compound*

A temporary works compound for use during the construction of the authorised development, located within the land described by the grid references—

- 10 - SK26942896
- 11 - SK26932914
- 12 - SK27242901
- 13 - SK27192891
- 14 - SK27062897

and shown hatched green on sheet 9 of the works plans, including—

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- (a) temporary car parking, hardstandings and roadways;
- (b) temporary offices and staff welfare portacabins;
- (c) temporary fabrication areas;
- (d) temporary materials, tools and fuel storage areas;
- (e) temporary pipe handling and storage;
- (f) temporary storage of plant and equipment;
- (g) wheel washing facilities;
- (h) temporary lighting.

**In South Derbyshire**

*Works No.9 - the Willington Power Station Temporary Works Compound*

A temporary works compound for use during the construction of the authorised development at the indicative location described by grid references—

- 15 - SK30332905
- 16 - SK30362911
- 17 - SK30412907
- 18 - SK30382902

and shown hatched green on sheet 10 of the works plans. Subject to the limits of deviation given by article 7, these works may be located anywhere within the area described by the following grid references—

- H - SK30112894
- J - SK30132891
- K - SK30172893
- L - SK30342897
- M - SK30992942
- N - SK30922949

The temporary works compound includes—

- (a) temporary car parking, hardstandings and roadways;
- (b) temporary offices and staff welfare portacabins;
- (c) temporary fabrication areas;
- (d) temporary materials, tools and fuel storage;
- (e) temporary pipe handling and storage;
- (f) temporary storage of plant and equipment;
- (g) wheel washing facilities;
- (h) temporary lighting.

**In both East Staffordshire and South Derbyshire**

*Works No.10 - Temporary structures during the construction period to allow construction access across watercourses, to be located within the works limits at the indicative locations below, comprising temporary bridges, pipe flumes or culverts at—*

- (a) East Staffordshire–River Swarbourn (shown at an indicative location as Works 10.1 on sheet 1 of the works plans);

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- (b) East Staffordshire–Mill Fleam 1 (shown at an indicative location as Works 10.2 on sheet 8 of the works plans);
- (c) East Staffordshire–Mill Fleam 2 (shown at an indicative location as Works 10.3 on sheet 8 of the works plans);
- (d) East Staffordshire/South Derbyshire–River Dove (shown at an indicative location as Works 10.4 on sheet 8 of the works plans);
- (e) South Derbyshire–Hilton Brook (shown at an indicative location as Works 10.5 on sheet 8 of the works plans);
- (f) South Derbyshire–Egginton Brook (shown at an indicative location as Works 10.6 on sheet 9 of the works plans);
- (g) South Derbyshire–Willington Brook (shown at an indicative location as Works 10.7 on sheet 9 of the works plans);
- (h) any other watercourses within the works limits as may be required.

**In both East Staffordshire and South Derbyshire**

*Works No.11* - Temporary construction and maintenance works for the authorised development, to be located within the works limits that are shown on works plans sheets 1 to 10, and contained by temporary fencing of no more than 2 metres in height.

The temporary construction and maintenance works include—

- (a) the erection of temporary fencing;
- (b) the creation of temporary gaps in hedgerows and the removal of trees and other vegetation;
- (c) the stripping of topsoil and creation of temporary soil storage stockpiles;
- (d) the creation of temporary tracks;
- (e) the laying out, welding and testing of steel pipes;
- (f) boring, tunnelling or drilling operations at roads, rivers, canals, railways and other obstacles;
- (g) the temporary damming of watercourses;
- (h) trenching work and the stockpiling of subsoil;
- (i) the installation of the pipeline and backfilling of the trench;
- (j) pipeline pressure testing;
- (k) reinstatement and replanting works;
- (l) land drainage remedial works and reinstatement;
- (m) dewatering works;
- (n) the removal of surplus excavated material;
- (o) the removal or repositioning of statutory undertakers' equipment;
- (p) temporary lighting;
- (q) the carrying out of any works and construction activities required in connection with the laying, placing, use, inspection, maintenance and diversion of the authorised development including drainage works, temporary bridges, ditch crossings, protective concrete slabs, inspection and maintenance culverts, cathodic and other protection works.

**In both East Staffordshire and South Derbyshire**

*Works No.12 - Temporary Access Works*

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

Temporary accesses within the works limits for construction, maintenance, or diversion of the authorised development at the indicative locations shown in Schedule 3 and described below—

*In East Staffordshire*

- (a) Works 12.1, an existing field access to be improved to provide permanent access to the Yoxall AGI site and also to be used as a temporary construction access for primary use (as defined in Schedule 3) from the A515 into the Yoxall AGI site, south of Yoxall. Shown at an indicative location on sheet 1 of the works plans.
- (b) Works 12.2, a temporary construction access for secondary use (as defined in Schedule 3), on the western side of the A515, south of Yoxall. Shown at an indicative location on sheet 1 of the works plans.
- (c) Works 12.3, a temporary construction access for primary use, on the eastern side of the A515, south of Yoxall. Shown at an indicative location on sheet 1 of the works plans.
- (d) Works 12.4, a temporary construction access for restricted use (as defined in Schedule 3), on the western side of Meadow Lane. Shown at an indicative location on sheet 1 of the works plans.
- (e) Works 12.5, a temporary construction access for restricted use, on the eastern side of Meadow Lane. Shown at an indicative location on sheet 1 of the works plans.
- (f) Works 12.6, a temporary construction access for primary use, on the southern side of the B5106, west of Barton Gate. Shown at an indicative location on sheet 2 of the works plans.
- (g) Works 12.7, a temporary construction access for primary use, on the northern side of the B5106, west of Barton Gate. Shown at an indicative location on sheet 2 of the works plans.
- (h) Works 12.8, a temporary construction access for primary use, on the southern side of Dunstall Cross Lane. Shown at an indicative location on sheet 3 of the works plans.
- (i) Works 12.9, a temporary construction access for primary use, on the northern side of Dunstall Cross Lane. Shown at an indicative location on sheet 3 of the works plans.
- (j) Works 12.10, a temporary construction access for secondary use, on the western side of Scotch Hills Lane. Shown at an indicative location on sheet 3 of the works plans.
- (k) Works 12.11, a temporary construction access for secondary use, on the eastern side of Scotch Hills Lane. Shown at an indicative location on sheet 3 of the works plans.
- (l) Works 12.12, a temporary construction access for primary use, on the western side of Rangemore Hill. Shown at an indicative location on sheet 4 of the works plans.
- (m) Works 12.13, a temporary construction access for restricted use, on the eastern side of Rangemore Hill. Shown at an indicative location on sheet 4 of the works plans.
- (n) Works 12.14, a temporary construction access for primary use, on the southern side of Tatenhill, Rangemore. Shown at an indicative location on sheet 4 of the works plans.
- (o) Works 12.15, a temporary construction access for primary use, on the northern side of Tatenhill, Rangemore. Shown at an indicative location on sheet 4 of the works plans.

- (p) Works 12.16, a temporary construction access for primary use, on the southern side of the B5017 at Needwood. Shown at an indicative location on sheet 5 of the works plans.
- (q) Works 12.17, a temporary construction access for primary use, on the northern side of the B5017 at Needwood. Shown at an indicative location on sheet 5 of the works plans.
- (r) Works 12.18, a temporary construction access for primary use, on the southern side of Hanbury Road, Anslow Gate. Shown at an indicative location on sheet 5 of the works plans.
- (s) Works 12.19, a temporary construction access for primary use, on the northern side of Hanbury Road, Anslow Gate. Shown at an indicative location on sheet 5 of the works plans.
- (t) Works 12.20, a temporary construction access for secondary use, on the western side of Bushton Lane. Shown at an indicative location on sheet 6 of the works plans.
- (u) Works 12.21, a temporary construction access for secondary use, on the eastern side of Bushton Lane. Shown at an indicative location on sheet 6 of the works plans.
- (v) Works 12.22, a temporary construction access for primary use, on the western side of the A511 Burton Road, south of Tutbury. Shown at an indicative location on sheet 7 of the works plans.
- (w) Works 12.23, a temporary construction access for primary use, on the eastern side of the A511 Burton Road, south of Tutbury. Shown at an indicative location on sheet 7 of the works plans.
- (x) Works 12.24, a temporary construction access for primary use, on the southern side of Church Road, Rolleston. Shown at an indicative location on sheet 7 of the works plans.
- (y) Works 12.25, a temporary construction access for primary use, on the northern side of Church Road, Rolleston. Shown at an indicative location on sheet 7 of the works plans.
- (z) Works 12.26, a temporary construction access for restricted use, on the western side of Marston Lane, Rolleston. Shown at an indicative location on sheet 7 of the works plans.
- (aa) Works 12.27, a temporary construction access for restricted use, on the eastern side of Marston Lane, Rolleston. Shown at an indicative location on sheet 7 of the works plans.

*In South Derbyshire*

- (a) Works 12.28, a temporary construction access for restricted use, on the western side of Etwall Road, Egginton. Shown at an indicative location on sheet 9 of the works plans.
- (b) Works 12.29, a temporary construction access for restricted use, on the eastern side of Etwall Road, Egginton. Shown at an indicative location on sheet 9 of the works plans.
- (c) Works 12.30, a temporary construction access for primary use, on the southern side of the A5132, Carriers Road. Shown at an indicative location on sheet 9 of the works plans.
- (d) Works 12.31, a temporary construction access for restricted use, on the western side of Ash Grove Lane, Egginton. Shown at an indicative location on sheet 9 of the works plans.

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- (e) Works 12.32, a temporary construction access for restricted use, on the eastern side of Ash Grove Lane, Egginton. Shown at an indicative location on sheet 9 of the works plans.
- (f) Works 12.33, a temporary construction access for primary use, on the southern side of the A5132, the Castleway, Willington. Shown at an indicative location on sheet 9 of the works plans.
- (g) Works 12.34, a temporary construction access for primary use, on the northern side of the A5132, the Castleway, Willington. Shown at an indicative location on sheet 9 of the works plans.
- (h) Works 12.35, a temporary construction access for primary use, on the western side of Findern Lane, Willington. Shown at an indicative location on sheet 10 of the works plans.
- (i) Works 12.36, a temporary construction access for primary use, on the eastern side of Findern Lane, Willington. Shown at an indicative location on sheet 10 of the works plans.
- (j) Works 12.37, an existing power station access to be used for permanent access to the Willington Block Valve (Works No.4), also to be used for temporary construction access for 'primary' use, on the northern side of the A5132, Twyford Road, Willington. Shown at an indicative location on sheet 10 of the works plans.
- (k) Following construction of the authorised development, Works 12.37 must be retained as the permanent access to Works No.4.

### **In East Staffordshire and South Derbyshire**

#### *Works No.13 – Street works*

Street works at the indicative locations set out in Schedule 2, including—

- (a) pipeline installation work (at indicative locations 13.2–13.15 and 13.17–13.20);
- (b) access creation work (at indicative locations 13.1–13.21);
- (c) reinstatement work (at indicative locations 13.1–13.21);
- (d) marker post installation (at indicative locations 13.2–13.15 and 13.17–13.20);
- (e) cathodic protection test cable installation (at indicative locations 13.2–13.15 and 13.17–13.20);
- (f) temporary lighting.

### **In East Staffordshire**

#### *Works No 14 - Creation of temporary car parking facilities for anglers*

The creation of a temporary car park for approximately 5 cars, no larger than 15 metres x 5 metres and to be situated approximately in the indicative location shown hatched turquoise on sheet 8 of the works plans, including—

- (a) the stripping and storage of topsoil;
- (b) the laying of geotextile;
- (c) the laying of hardcore;
- (d) temporary fencing.

## PART 2

### REQUIREMENTS

#### Interpretation

1. In this Part—

“county council” means the county planning authority for the area in which the land to which the provisions of this Order apply is situated (Staffordshire County Council or Derbyshire County Council, as the case may be);

“European protected species” has the meaning given in Part 3 of the Conservation of Habitats and Species Regulations 2010<sup>(45)</sup>;

“flood risk area” means the 1 in 100 year flood plain of the River Dove as identified in the Willington C Gas Pipeline flood risk assessment submitted to the Secretary of State in accordance with article 33(e) (certification of plans, etc.) and the addendum to that assessment (WCGP 030.013, version 2, April 2014);

“local highway authority” has the same meaning as in the Highways Act 1980<sup>(46)</sup>;

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

#### Time limits

2. The authorised development must commence no later than the expiration of 5 years beginning with the date that this Order comes into force or such longer period as the Secretary of State may hereafter direct in writing.

#### Stages of authorised development

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

#### Detailed design approval

4.—(1) No stage of the authorised development must commence until details of the layout, scale and external appearance of the following works within that stage (including any consultation responses from the Environment Agency, for those parts of the authorised development within the flood risk area and from the county council for the area of Works No.7 (the Yoxall Temporary Works Compound)) have been submitted to and approved, in writing, by the relevant planning authority—

- (a) Works No.3 (the Yoxall AGI);
- (b) Works No.7 (the Yoxall Temporary Works Compound), Works No.8 (the Carriers Road Temporary Works Compound) and Works No.9 (the Willington Power Station Temporary Works Compound), lay down and storage areas and facilities;
- (c) the detailed pipeline route alignment; and
- (d) the construction corridor, including additional working areas.

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<sup>(45)</sup> S.I. 2010/490. “European protected species” is defined in regulation 40(2).

<sup>(46)</sup> “Local highway authority” is defined in section 329.



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(2) The works described in sub-paragraph (1)(a) to (d) must be carried out in accordance with the approved details or any subsequent revisions that have been submitted to and approved, in writing, by the relevant planning authority.

### **Landscaping**

5.—(1) The construction of the Works No.3 (the Yoxall AGI) must not commence until a landscaping scheme, including an implementation timetable, in relation to that work has been submitted to and approved, in writing, by the relevant planning authority. The landscaping scheme must include details of all proposed hard and soft landscaping works and be based on the draft landscaping plan contained in the environmental statement.

(2) All landscaping works must be carried out in accordance with the approved landscaping scheme except to the extent that a variation to the scheme is approved by the relevant planning authority in writing.

(3) Any tree or shrub planted as part of the approved landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes (in the opinion of the relevant planning authority) seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted unless otherwise approved, in writing, by the relevant planning authority.

### **Hedgerows and trees**

6.—(1) No construction or diversion of the authorised development, involving the felling or lopping of trees or shrubs authorised under article 32 (felling or lopping of trees, etc.), must commence until (in relation to the relevant works) a written hedgerow and tree management plan for the management of the removal and (where appropriate) reinstatement or protection of affected hedgerows and trees within the works limits has been approved, in writing, by the relevant planning authority.

(2) The plan must identify root protection areas and construction exclusion zones and detail the methods of protection for hedges and trees. The plan must have regard to the standards contained in BS 5837:2012 (trees in relation to design, demolition and construction).

(3) The plan must identify affected hedges where mitigation measures are to be taken and include information, where appropriate, on the protection of retained sections, the enhancement of species-poor hedgerows and a detailed reinstatement and after-care plan.

(4) The plan must identify trees within and overhanging the construction area and provide a management and protection plan for those to be retained and a replanting plan for those to be removed.

(5) The removal, protection and reinstatement of the hedgerows and trees must be carried out in accordance with the approved plan except to the extent that a variation to the plan is approved by the relevant planning authority in writing.

(6) Hedges and trees must be reinstated in the first planting season following the completion of construction unless otherwise approved, in writing, by the relevant planning authority.

(7) Any hedge or tree planting which is part of an approved reinstatement plan that, within a period of 5 years after planting, is removed, dies or (in the opinion of the relevant planning authority) becomes seriously damaged or diseased, must be replaced in the first available planting season with planting material of the same specification as that originally planted unless otherwise approved, in writing, by the relevant planning authority.

(8) This Requirement does not apply to the cutting and lopping of trees and vegetation carried out in relation to the operation or maintenance of the authorised development.

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

7.—(1) No stage of the authorised development (including the removal of roadside hedges) must commence until, for that stage, a written plan based on the transport statement section of the environmental statement has been submitted to and approved, in writing, by the relevant planning authority. The plan must include details of construction traffic and highway access arrangements and include copies of and take account of any consultation responses from the local highway authority.

(2) The plan must contain details of the siting, design and layout of any new permanent or 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.

(3) The plan must if required by the local highway authority include details of the management measures to be employed at the highway accesses and construction car parking.

(4) The plan must include details of all routes designated for construction delivery vehicles and must include details of a scheme for the signing of these routes. The designated routes must be based on those described in the transport statement within the environmental statement.

(5) Throughout the period of the construction of the authorised development, vehicle wheel washing facilities must be provided as a minimum at the sites of Works No.7 (the Yoxall Temporary Works Compound) and of Works No.8 (the Carriers Road Temporary Works Compound). The written plan approved under sub-paragraph (1) must require that all construction vehicles must have their wheels cleaned before leaving the sites.

(6) Subject to sub-paragraph (7), the construction traffic and highway access arrangements plan must be implemented as approved except to the extent that a variation to the plan is approved by the relevant planning authority in writing. Any submission to vary the approved plan must include copies of and take account of any consultation responses from the local highway authority.

(7) Urgent works necessary on highway safety grounds, which would require a variation to the approved plan, may proceed following the sole approval, in writing, of the local highway authority.

### **Public rights of way**

8.—(1) No stage of the authorised development that would affect Staffordshire County Council Footpath 59 must commence until a written implementation plan and specification for the making up of an alternative right of way in accordance with article 11 (public rights of way) and as described in the public rights of way management strategy document of the environmental statement has been submitted to and approved, in writing, by the relevant planning authority. The plan must include copies of and take account of any consultation responses from the local highway authority.

(2) The alternative right of way must be implemented in accordance with the approved plan and specification except to the extent that a variation to the plan and specification is approved by the relevant planning authority in writing. Any submission to vary the approved plan and specification must include copies of and take account of any consultation responses from the local highway authority.

(3) No stage of the authorised development that would affect any public right of way (other than that referred to in sub-paragraph (1)) must commence until a written plan (based upon the public rights of way management strategy document of the environmental statement numbered WCGP 14.2.13.1) for the temporary closure and, where appropriate, diversion of the right of way has been submitted to and approved, in writing, by the relevant planning authority. The plan must include copies of and take account of any consultation responses from the local highway authority.

(4) Any temporary closure or diversion referred to in sub-paragraph (3) must be carried out in accordance with the approved plan except to the extent that a variation to the plan is approved by the relevant planning authority in writing. Any submission to vary the approved plan must include copies of and take account of any consultation responses from the local highway authority.

### **Temporary fencing and other means of enclosure**

9.—(1) No stage of the authorised development must commence until details of all proposed temporary fencing or other means of enclosure for that stage have been submitted to and approved, in writing, by the relevant planning authority. The details must include copies of and take account of any consultation responses from the Environment Agency in relation to any temporary fencing that is within a flood risk area.

(2) Temporary fencing and other means of enclosure must be used in accordance with the approved details except to the extent that a variation to the details is approved by the relevant planning authority in writing. Any submission to vary the approved details must include copies of and take account of any consultation responses from the Environment Agency in relation to any temporary fencing that is within a flood risk area.

(3) Works No.3 (the Yoxall AGI), Works No.11 (Temporary construction and maintenance works for the authorised development), Works No. 7, 8, and 9 (the Yoxall, Carriers Road and Willington Power Station Temporary Works Compounds) and any construction sites must remain enclosed with fencing at all times while they are being used for the construction, reinstatement or restoration of the authorised development.

(4) Any temporary fencing of the areas in sub-paragraph (3) must be removed when those areas cease to be used for the construction, reinstatement or restoration of the authorised development unless otherwise approved, in writing, by the relevant planning authority.

### **Surface water drainage and water discharge**

10.—(1) No stage of the authorised development must commence until, for that stage, details of the surface water drainage system (including means of pollution control) for both temporary and permanent works have been submitted to and approved, in writing, by the relevant planning authority. The details must include copies of and take account of any consultation responses from the Environment Agency.

(2) The surface water drainage system must be constructed in accordance with the approved details except to the extent that a variation to the details is approved by the relevant planning authority in writing. Any submission to vary the approved details must include copies of and take account of any consultation responses from the Environment Agency.

(3) No discharge of water used under article 14 (discharge of water) must be made until written details of the location and rate of discharge have been submitted to and approved, in writing, by the relevant planning authority. The details must include copies of and take account of any consultation responses from the Environment Agency.

### **Contaminated land and groundwater**

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

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

(3) Remedial measures must be carried out in accordance with the approved scheme except to the extent that a variation to the scheme is approved by the relevant planning authority in writing. Any submission to vary the approved scheme must include copies of and take account of any consultation responses from the Environment Agency.

### **Soil handling and restoration**

12.—(1) No stage of the authorised development must commence until a written scheme, applicable to that stage, to deal with the management of soil within the works limits has been submitted to and approved, in writing, by the relevant planning authority.

(2) The scheme must include an investigation and assessment report giving details of the soil types and appropriate measures relating to the stripping, storage, handling, reinstatement and restoration of soils.

(3) Soil management works must be carried out in accordance with the approved scheme except to the extent that a variation to the scheme is approved by the relevant planning authority in writing.

### **Agricultural land drainage**

13.—(1) No stage of the authorised development must commence until a written scheme, applicable to that stage, to deal with agricultural land drainage within the works limits has been submitted to and approved, in writing, by the relevant planning authority.

(2) The purpose of the scheme is to ensure that, during and following construction, the efficiency of drainage is maintained within and outside the works limits.

(3) The scheme must include an investigation and assessment report giving details of existing drainage arrangements and requirements for pre-construction works and post-construction reinstatement.

(4) Works must be carried out in accordance with the approved scheme except to the extent that a variation to the scheme is approved by the relevant planning authority in writing.

### **Archaeology**

14.—(1) No stage of the authorised development must commence until, for that stage, a written scheme for the investigation (“WSI”) of areas of archaeological interest (as identified in the draft WSI numbered WCGP 14.2.12.5 contained in the environmental statement) has been submitted to and approved, in writing, by the relevant planning authority. The scheme must include copies of and take account of any consultation responses from the county council and English Heritage.

(2) The scheme must be based on the draft WSI in the environmental statement and must identify areas where archaeological works are required and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) The WSI must identify a suitably qualified person or body that must carry out any archaeological works under the scheme.

(4) Any archaeological works must be carried out in accordance with the approved scheme except to the extent that a variation to the scheme is approved by the relevant planning authority in writing. Any submission to vary the approved scheme must include copies of and take account of any consultation responses from the county council and English Heritage.

### **Ecological management plan**

15.—(1) No stage of the authorised development must commence until a written ecological management plan for that stage reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement and including details of the appointment and duties of an environmental manager/clerk of works has been submitted to and approved, in writing, by the relevant planning authority.

(2) The ecological management plan must include an implementation timetable, and environmental management must be carried out in accordance with the approved plan except to the extent that a variation to the scheme is approved by the relevant planning authority in writing.

### **Temporary external lighting**

16.—(1) No stage of the authorised development must commence until details of any temporary external lighting to be installed at that stage, including measures to prevent light spillage, have been submitted to and approved, in writing, by the relevant planning authority.

(2) The details must include and take account of any consultation responses from the local highway authority.

(3) The temporary external lighting must be installed in accordance with the approved details except to the extent that a variation to the details is approved by the relevant planning authority in writing.

(4) Any submission to vary the approved details must include copies of and take account of any consultation responses from the local highway authority.

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

17.—(1) No stage of the authorised development must commence until a written scheme for noise management during construction and maintenance of that stage has been submitted to and approved, in writing, by the relevant planning authority. The scheme must be based on the assessment and mitigation proposals contained in chapter 10 of the environmental statement with reference to BS5228 (code of practice for noise and vibration control at construction and open sites).

(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) the provision of mitigation and, where relevant, agreed compensation terms for noise disturbance.

(3) The construction and maintenance works must be undertaken in accordance with the approved scheme except to the extent that a variation to the scheme is approved by the relevant planning authority in writing.

### **Construction hours**

18.—(1) Construction work must not take place outside the following hours—

- (a) 7 a.m. to 7 p.m. on Monday to Friday (excluding bank holidays); or
- (b) 7 a.m. to 5 p.m. on Saturday,

except if it—

- (c) is associated with an emergency;
- (d) is carried out with the prior written approval of the relevant planning authority;
- (e) does not cause night-time noise limits approved under Requirement 17 to be exceeded; or
- (f) is required for the crossings of the River Dove, Carriers Road (A5132), A38, A515, Trent and Mersey Canal or railway lines and any other crossing locations approved, in writing, by the relevant planning authority.

(2) Heavy commercial vehicular traffic associated with the construction of the authorised development must not enter or leave the construction site outside the following hours—

- (a) 7 a.m. to 7 p.m. on Monday to Friday (excluding bank holidays); or
- (b) 8 a.m. to 4 p.m. on Saturday,

except if such movement—

- (c) is associated with an emergency; or
- (d) is carried out with the prior written approval of the relevant planning authority.

### Control of dust emissions

**19.**—(1) The authorised development must not commence until a written scheme for the management and mitigation of dust emissions has been submitted to and approved, in writing, by the relevant planning authority.

(2) The approved scheme for the management and mitigation of dust emissions must be implemented before and maintained during the construction of the relevant stage of the authorised development except to the extent that a variation to the scheme is approved by the relevant planning authority in writing.

### European protected species

**20.**—(1) No stage of the authorised development must commence until, for that stage, a scheme of protection and mitigation measures in compliance with all relevant licensing requirements for licensable activities in respect of European protected species within that stage has been submitted to and approved, in writing, by the relevant planning authority.

- (2) The scheme must also include details of the measures to be taken to avoid or minimise—
- (a) significant adverse impacts to great crested newts and their breeding habitats; and
  - (b) significant adverse impacts on bats and bat roosts in relation to the final route selection, the arrangement and management of construction working areas and the construction of the authorised development.

(3) The authorised development must be carried out in accordance with the approved scheme except to the extent that a variation to the scheme is approved by the relevant planning authority in writing, and any such variation must comply with sub-paragraphs (1) and (2).

### Reinstatement of land used temporarily for construction

**21.** Any land within the works limits that is used temporarily for construction must be reinstated to its former condition (or such condition as the relevant planning authority may approve in writing) within 6 months of completion of the authorised development unless otherwise approved, in writing, by the relevant planning authority.

## SCHEDULE 2

Article 10

### STREETS SUBJECT TO STREET WORKS

<i>1</i> <i>Area</i>	<i>2</i> <i>Street subject to street works</i>	<i>3</i> <i>Indicative location on the works plans</i>	<i>4</i> <i>Works plans sheet number</i>
East Staffordshire	A515, South of Yoxall	13.1	1
East Staffordshire	A515, South of Yoxall	13.2	1
East Staffordshire	Meadow Lane, Yoxall	13.3	1
East Staffordshire	B5016, Barton Gate	13.4	2

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<i>1</i> <i>Area</i>	<i>2</i> <i>Street subject to street works</i>	<i>3</i> <i>Indicative location on the works plans</i>	<i>4</i> <i>Works plans sheet number</i>
East Staffordshire	Dunstall Cross Lane	13.5	3
East Staffordshire	Scotch Hills Lane	13.6	3
East Staffordshire	Rangemore Hill	13.7	4
East Staffordshire	Tatenhill, Rangemore	13.8	4
East Staffordshire	B5017, Needwood	13.9	5
East Staffordshire	Hanbury Road, Anslow Gate	13.10	5
East Staffordshire	Bushton Lane	13.11	6
East Staffordshire	A511 Burton Road	13.12	7
East Staffordshire	Church Road, Rolleston	13.13	7
East Staffordshire	Marston Lane, Rolleston	13.14	7
South Derbyshire	Etwall Road	13.15	9
South Derbyshire	A5132 Carriers Road	13.16	9
South Derbyshire	Ash Grove Lane	13.17	9
South Derbyshire	A5132 the Castleway	13.18	9
South Derbyshire	B5008 Etwall Road	13.19	10
South Derbyshire	Findern Lane	13.20	10
South Derbyshire	Twyford Road	13.21	10

## SCHEDULE 3

Article 12

## ACCESS TO WORKS

<i>1</i> <i>Area</i>	<i>2</i> <i>Description of access</i>	<i>3</i> <i>Type</i>	<i>4</i> <i>Use Restrictions<sup>(*)</sup></i>	<i>5</i> <i>Indicative location on the works plans</i>	<i>6</i> <i>Works plans sheet number</i>
East Staffordshire	A515, South of Yoxall	Existing Permanent	Primary	12.1	1
East Staffordshire	A515 (West), South of Yoxall	Temporary	Secondary	12.2	1

(\*) Use restrictions—

Primary use: suitable for all construction traffic

Secondary use: not to be used for HGVs but suitable for other construction traffic

Restricted use: not to be used for construction traffic but can be used as a plant crossing

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<i>1</i> <i>Area</i>	<i>2</i> <i>Description of access</i>	<i>3</i> <i>Type</i>	<i>4</i> <i>Use Restrictions<sup>(*)</sup></i>	<i>5</i> <i>Indicative location on the plans</i>	<i>6</i> <i>Works plans sheet number</i>
East Staffordshire	A515 (East), South of Yoxall	Temporary	Primary	12.3	1
East Staffordshire	Meadow Lane (West)	Temporary	Restricted	12.4	1
East Staffordshire	Meadow Lane (East)	Temporary	Restricted	12.5	1
East Staffordshire	B5016 (South), Barton Gate	Temporary	Primary	12.6	2
East Staffordshire	B5016 (North), Barton Gate	Temporary	Primary	12.7	2
East Staffordshire	Dunstall Cross Lane (South)	Temporary	Primary	12.8	3
East Staffordshire	Dunstall Cross Lane (North)	Temporary	Primary	12.9	3
East Staffordshire	Scotch Hills Lane (West)	Temporary	Secondary	12.10	3
East Staffordshire	Scotch Hills Lane (East)	Temporary	Secondary	12.11	3
East Staffordshire	Rangemore Hill (West)	Temporary	Primary	12.12	4
East Staffordshire	Rangemore Hill (East)	Temporary	Restricted	12.13	4
East Staffordshire	Tatenhill (South), Rangemore	Temporary	Primary	12.14	4
East Staffordshire	Tatenhill (North), Rangemore	Temporary	Primary	12.15	4
East Staffordshire	B5017 (South), Needwood	Temporary	Primary	12.16	5
East Staffordshire	B5017 (North), Needwood	Temporary	Primary	12.17	5
East Staffordshire	Hanbury Road (West), Anslow Gate	Temporary	Primary	12.18	5

(\*) Use restrictions—

Primary use: suitable for all construction traffic

Secondary use: not to be used for HGVs but suitable for other construction traffic

Restricted use: not to be used for construction traffic but can be used as a plant crossing



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<i>1</i> <i>Area</i>	<i>2</i> <i>Description of access</i>	<i>3</i> <i>Type</i>	<i>4</i> <i>Use Restrictions<sup>(*)</sup></i>	<i>5</i> <i>Indicative location on the plans</i>	<i>6</i> <i>Works plans on sheet number</i>	
East Staffordshire	Hanbury (East), Gate	Road Anslow	Temporary	Primary	12.19	5
East Staffordshire	Bushton (West)	Lane	Temporary	Secondary	12.20	6
East Staffordshire	Bushton (East)	Lane	Temporary	Secondary	12.21	6
East Staffordshire	A511 Road Tutbury	Burton (West),	Temporary	Primary	12.22	7
East Staffordshire	A511 Road Tutbury	Burton (East),	Temporary	Primary	12.23	7
East Staffordshire	Church Rolleston	Road (South)	Temporary	Primary	12.24	7
East Staffordshire	Church Rolleston	Road (North)	Temporary	Primary	12.25	7
East Staffordshire	Marston Rolleston	Lane (West)	Temporary	Restricted	12.26	7
East Staffordshire	Marston Rolleston	Lane (East)	Temporary	Restricted	12.27	7
South Derbyshire	Etwall (West),	Road Egginton	Temporary	Restricted	12.28	9
South Derbyshire	Etwall (East),	Road Egginton	Temporary	Restricted	12.29	9
South Derbyshire	A5132, Road	Carriers compound	Temporary to	Primary	12.30	9
South Derbyshire	Ash Grove (West),	Lane Egginton	Temporary	Restricted	12.31	9
South Derbyshire	Ash Grove (East),	Lane Egginton	Temporary	Restricted	12.32	9
South Derbyshire	A5132, Castleway	the	Temporary	Primary	12.33	9

(\*) Use restrictions—

Primary use: suitable for all construction traffic

Secondary use: not to be used for HGVs but suitable for other construction traffic

Restricted use: not to be used for construction traffic but can be used as a plant crossing

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<i>1</i> Area	<i>2</i> Description of access	<i>3</i> of Type	<i>4</i> Use Restrictions <sup>(*)</sup>	<i>5</i> Indicative location on the plans	<i>6</i> Works on plans sheet number
	(South), Willington				
South Derbyshire	A5132, Castleway (North), Willington	the Temporary	Primary	12.34	9
South Derbyshire	Findern (West), Willington	Lane Temporary	Primary	12.35	10
South Derbyshire	Findern (East), Willington	Lane Temporary	Primary	12.36	10
South Derbyshire	A5132, Twyford Road, Willington	Existing Permanent	Primary	12.37	10

(\*) Use restrictions—

Primary use: suitable for all construction traffic

Secondary use: not to be used for HGVs but suitable for other construction traffic

Restricted use: not to be used for construction traffic but can be used as a plant crossing

#### SCHEDULE 4

Article 15(1)

#### LAND IN WHICH SURVEYS AND INVESTIGATIONS MAY BE CARRIED OUT

<i>(1)</i>	<i>(2)</i>
1, 2, 3, 3B, 4, 4B, 5, 5B, 6, 6B, 8, 9, 9B, 10, 11, 11B, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 23B, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 45B, 46, 47, 47B, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 77B, 78, 78B, 79, 79B, 79C, 80, 81, 82, 83, 84, 84B, 84C, 85, 86, 87, 88, 89, 90, 90B, 90C, 91, 92, 93, 94, 95, 98, 99, 100, 101, 102, 102B, 102C, 102D, 103, 104, 105, 106, 107, 108, 108B, 109, 109B, 109C, 109D, 109E, 110, 110B, 110C, 111, 112, 113, 114, 119, 119B, 120, 121, 122, 123, 124, 125, 126, 127, 128, 128B, 129, 131, 131B, 132, 134, 134B, 134C, 134D, 135, 136, 137	Temporary rights of access, with or without vehicles, plant, apparatus and materials: (a) to carry out soil tests, surveys (including environmental, ecological and archaeological surveys) and other investigation works including the making of trial holes and boreholes; and (b) to carry out non-intrusive environmental wildlife surveys on the land and on each water body on the land including the assessment of habitats.
7	Temporary rights of access, with or without vehicles, plant, apparatus and materials:

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<i>(1)</i>	<i>(2)</i>
	<p>(a) to carry out surveys and other investigation works (including environmental, ecological and archaeological surveys but excluding the making of trial holes and boreholes); and</p> <p>(b) to carry out non-intrusive environmental wildlife surveys on the land and on each water body on the land including the assessment of habitats.</p>
139	<p>Temporary right of access, plant, apparatus and materials to carry out surveys and other investigation work (including environmental, ecological and archaeological surveys but excluding the making of trial holes and boreholes).</p>
<p>Those plots described in the book of reference prefixed with S</p>	<p>The right to access the land from time to time, with or without vehicles, to carry out non-intrusive environmental wildlife surveys on the land and on each water body on the land including the assessment of habitats.</p>

SCHEDULE 5

Articles 18(1) and 27(a)

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

<i>(1)</i>	<i>(2)</i>
<i>Number of land shown on land plans</i>	<i>New rights over the land to be acquired</i>
1	<p>(a) Right of access to construct, place and use the pipeline together with all necessary ancillary equipment, works and apparatus;</p>

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(1)  
*Number of land shown on land plans*

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(2)  
*New rights over the land to be acquired*

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(b) Right of access, once the pipeline is laid, to inspect and to excavate and to open up or carry out works on a strip of land 18.3 metres in width (under which the pipeline has been laid) in order to maintain<sup>(47)</sup> the pipeline;

(c) Right of access to execute any other works for the purposes of or incidental to the construction, use or maintenance of the pipeline

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<sup>(47)</sup> “Maintain” is defined in article 2.

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<p>(1) <i>Number of land shown on land plans</i></p>	<p>(2) <i>New rights over the land to be acquired</i> or in consequence of its being placed there including but not limited to drainage works, ground and aerial marker posts, temporary bridges and pedestrian crossings over ditches, protective concrete slabs, culverts to facilitate inspection and maintenance and cathodic or other protection works; and</p> <p>(d) Right of access with or without vehicles, plant, apparatus</p>
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<p>(1) Number of land shown on land plans</p>	<p>(2) New rights over the land to be acquired and materials to pass over the land for the purposes of exercising or in connection with the rights referred to above.</p>
<p>1, 2</p>	<p>Right of access with or without vehicles, plant, apparatus and materials to pass over and use the land for construction purposes in connection with the construction of the pipeline or the above-ground installation.</p>
<p>7</p>	<p>(a) Right of access to construct, place and</p>

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<p>(1) <i>Number of land shown on land plans</i></p>	<p>(2) <i>New rights over the land to be acquired</i></p>
	<p>use the pipeline together with all necessary ancillary equipment, works and apparatus;</p>
	<p>(b) Right of access, once the pipeline is laid, to maintain the pipeline; and</p>
	<p>(c) Right of access to execute any other works for the purposes of or incidental to the construction, use or maintenance of the pipeline or in consequence of its being placed there including but not limited to</p>

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<p>(1) <i>Number of land shown on land plans</i></p>	<p>(2) <i>New rights over the land to be acquired</i></p>
	<p>drainage works, ground and aerial marker posts, inspection and maintenance, culverts to facilitate inspection and maintenance and cathodic or other protection works.</p>
	<p>(d) Right of access with or without vehicles, plant, apparatus and materials to pass over the land for the purposes of exercising or in connection with the rights referred to above.</p>

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<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>New rights over the land to be acquired</i>
10	(a) Right of access to construct, place and use the pipeline together with all necessary ancillary equipment, works and apparatus;  (b) Right of access, once the pipeline is laid, to excavate and to open up or carry out works on any unbuilt-upon land in order to maintain the pipeline;  (c) Right of access to execute any other works for the purposes of or

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<p>(1) <i>Number of land shown on land plans</i></p>	<p>(2) <i>New rights over the land to be acquired</i></p>
	<p>incidental to the construction use or maintenance of the pipeline or in consequence of its being placed there including but not limited to drainage works, ground and aerial marker-posts, temporary bridges and pedestrian crossings over ditches, protective concrete slabs, culverts to facilitate inspection and maintenance and cathodic or other protection works; and</p>

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<p>(1) Number of land shown on land plans</p>	<p>(2) New rights over the land to be acquired</p>
	<p>(d) Right of access with or without vehicles, plant, apparatus and materials to pass over the land for the purposes of exercising or in connection with the rights referred to above.</p>
<p>11</p>	<p>Right of access with or without vehicles, plant, apparatus and materials to pass over the land in connection with the construction use or maintenance of the pipeline.</p>
<p>11B, 19, 20, 24, 26, 54, 58, 83, 89, 90, 90C, 91, 92, 93, 95, 108, 108B, 109B, 109D, 109E, 110, 112, 128B, 134, 134B</p>	<p>(a) Right of access to construct,</p>

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<p>(1) <i>Number of land shown on land plans</i></p>	<p>(2) <i>New rights over the land to be acquired</i></p>
	<p>place and use the pipeline together with all necessary ancillary equipment, works and apparatus;</p>
	<p>(b) Right of access, once the pipeline is laid, to excavate and to open up or carry out works on any unbuilt-upon land within a strip of land 30 metres in width (under which the pipeline has been laid) in order to maintain the pipeline;</p>
	<p>(c) Right of access to</p>

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<p>(1) <i>Number of land shown on land plans</i></p>	<p>(2) <i>New rights over the land to be acquired</i></p>
	<p>execute any other works for the purposes of or incidental to the construction, use or maintenance of the pipeline or in consequence of its being placed there including but not limited to drainage works, ground and aerial marker-posts, temporary bridges and pedestrian crossings over ditches, protective concrete slabs, culverts to facilitate inspection and maintenance and</p>

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<p>(1) Number of land shown on land plans</p>	<p>(2) New rights over the land to be acquired cathodic or other protection works; and  (d) Right of access with or without vehicles, plant, apparatus and materials to pass over the land for the purposes of exercising or in connection with the rights referred to above.</p>
<p>80, 81, 84C</p>	<p>Right of access with or without vehicles, plant, apparatus and materials to pass over the land in connection with the construction use or maintenance</p>

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<p>(1) Number of land shown on land plans</p>	<p>(2) New rights over the land to be acquired</p>
<p>102C</p>	<p>of the pipeline.  Right of access to create an access and, with or without vehicles, plant apparatus and materials, to pass over the land in connection with the construction and use of the Works No.8 (the Carriers Road Temporary Works Compound).</p>
<p>130, 130B, 133, 138</p>	<p>(a) Right of access to construct, place and use the pipeline together with all necessary ancillary equipment, works and apparatus;</p>

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(1)  
*Number of land shown on land plans*

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(2)  
*New rights over the land to be acquired*

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(b) Right of access, once the pipeline is laid, to maintain the pipeline; and

(c) Right of access to execute any other works for the purposes of or incidental to the construction of the pipeline or in consequence of its being placed there including but not limited to drainage works, and inspection, monitoring, maintenance, culverts to facilitate inspection and maintenance and



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<p>(1) Number of land shown on land plans</p>	<p>(2) New rights over the land to be acquired cathodic or other protection works.</p>
<p>138B, 139, 139B</p>	<p>(a) Right of access to construct, place and use the pipeline together with all necessary ancillary equipment, works and apparatus;  (b) Right of access, once the pipeline is laid, to maintain the pipeline; and  (c) Right of access to execute any other works for the purposes of or incidental to the construction use or maintenance of the</p>

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<p>(1) <i>Number of land shown on land plans</i></p>	<p>(2) <i>New rights over the land to be acquired</i></p>
	<p>pipeline or in consequence of its being placed there including but not limited to drainage works, ground and aerial marker-posts, and inspection, monitoring, maintenance, culverts to facilitate inspection and maintenance and cathodic or other protection works.</p>
	<p>(d) Right of access with plant, apparatus and materials to pass over the land on foot for the purposes</p>

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<p>(1) Number of land shown on land plans</p>	<p>(2) New rights over the land to be acquired of exercising or in connection with the rights referred to above.</p>
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SCHEDULE 6

Article 18(2)

LAND OVER WHICH RESTRICTIVE OBLIGATIONS AND RIGHTS OF SUPPORT ARE REQUIRED

(1) Area	(2) Number of land shown on land plans	(3) Details of restrictive covenants and right of support required
East Staffordshire	1	<p>(a) Not to erect, construct or place or allow to be erected, constructed or placed any building or structure on or carry out or allow to be carried out any excavation (save normal agricultural operations, which must not damage or otherwise affect the safety or integrity of the pipeline) of the part of the land comprising a strip 18.3 metres in width in which the pipeline is centrally situated (the “Plot 1 Easement Strip”).</p> <p>(b) Not to plant or allow to be planted or otherwise subsist on the Plot 1 Easement Strip any trees.</p> <p>(c) Not materially to raise or lower or allow to be raised or lowered the existing level of the Plot 1 Easement Strip.</p> <p>(d) Not to undermine or damage or allow to be undermined or damaged the pipeline comprising part of the authorised development or do or allow to be done anything which may interfere with free flow and passage through the pipeline.</p> <p>(e) The right to continuous vertical and lateral support for the authorised development.</p>
East Staffordshire	7, 10, 11B, 19, 20, 24, 26, 54, 58, 83,	(a) Not to erect, construct or place or allow to be erected, constructed or placed any building or structure on or

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(1) Area	(2) Number of land shown on land plans	(3) Details of restrictive covenants and right of support required
and South Derbyshire	89, 90, 90C, 91, 92, 93, 95, 108, 108B, 109B, 109D, 109E, 110, 112, 128B, 134, 134B	<p>carry out or allow to be carried out any excavation (save normal agricultural operations, which must not damage or otherwise affect the safety or integrity of the pipeline) of the part of the land comprising a strip 7 metres in width in which the pipeline is centrally situated (the “Easement Strip”).</p> <p>(b) Not to plant or allow to be planted or otherwise subsist on the Easement Strip any trees.</p> <p>(c) Not materially to raise or lower or allow to be raised or lowered the existing level of the Easement Strip.</p> <p>(d) Not to undermine or damage or allow to be undermined or damaged the pipeline comprising part of the authorised development or do or allow to be done anything which may interfere with free flow and passage through the pipeline.</p> <p>(e) The right to continuous vertical and lateral support for the authorised development.</p>
South Derbyshire	130, 130B, 133, 138	<p>(a) Not to erect, construct or place or allow to be erected, constructed or placed any building or structure on or carry out or allow to be carried out any excavation (save normal railway apparatus and equipment, which must not damage or otherwise affect the safety or integrity of the pipeline) of the part of the land comprising the Easement Strip.</p> <p>(b) Not to plant or allow to be planted or otherwise subsist on the Easement Strip any trees.</p> <p>(c) Not materially to raise or lower or allow to be raised or lowered the existing level of the Easement Strip.</p> <p>(d) Not to undermine or damage or allow to be undermined or damaged the pipeline comprising part of the authorised development or do or allow to be done anything which may interfere with free flow and passage through the pipeline.</p> <p>(e) The right to continuous vertical and lateral support for the authorised development.</p>
South Derbyshire	139	<p>(a) Not to erect, construct or place or allow to be erected, constructed or placed any building or structure on or carry out or allow to be carried out any excavation (save normal waterways apparatus and equipment, which must not damage or otherwise affect the safety or integrity of the pipeline) of the part of the land comprising the Easement Strip.</p>

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(1) Area	(2) Number of land shown on land plans	(3) Details of restrictive covenants and right of support required
		<p>(b) Not to plant or allow to be planted or otherwise subsist on the Easement Strip any trees.</p> <p>(c) Not materially to raise or lower or allow to be raised or lowered the existing level of the Easement Strip.</p> <p>(d) Not to undermine or damage or allow to be undermined or damaged the pipeline comprising part of the authorised development or do or allow to be done anything which may interfere with free flow and passage through the pipeline.</p> <p>(e) The right to continuous vertical and lateral support for the authorised development.</p>
South Derbyshire	138B, 139B	<p>(a) Not to erect, construct or place or allow to be erected, constructed or placed any building or structure on or carry out or allow to be carried out any excavation (save normal railways or waterways apparatus and equipment, which must not damage or otherwise affect the safety or integrity of the pipeline) of the part of the land comprising the Easement Strip.</p> <p>(b) Not to plant or allow to be planted or otherwise subsist on the Easement Strip any trees.</p> <p>(c) Not materially to raise or lower or allow to be raised or lowered the existing level of the Easement Strip.</p> <p>(d) Not to undermine or damage or allow to be undermined or damaged the pipeline comprising part of the authorised development or do or allow to be done anything which may interfere with free flow and passage through the pipeline.</p> <p>(e) The right to continuous vertical and lateral support for the authorised development.</p>

SCHEDULE 7

Article 18(5)

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS, ETC.

**Compensation enactments**

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

the imposition of a restrictive obligation, as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limiting paragraph 1, the Land Compensation Act 1973(48) has effect subject to the modifications set out in sub-paragraph (2).

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

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

### **Application of 1965 Act**

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

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

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

4. Section 11 of the 1965 Act (powers of entry) is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any new right or restrictive obligation, it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive obligation (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry)(49) and 13 (entry on warrant in the event of obstruction)(50) of the 1965 Act are modified correspondingly.

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(48) 1973 c.26. Section 44 was amended by paragraph 13(b) of Schedule 24 to the Highways Act 1980, paragraph 14(d) of Schedule 7 to the Gas Act 1986 (c.44) and paragraph 23 of Schedule 1 to the Water Consolidation (Consequential Provisions) Act 1991 (c.60).

(49) Section 12 was modified by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c.23).

(50) Section 13 was amended by section 139 of, paragraph 28(2) of Schedule 13 to, and Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007.

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## SCHEDULE 8

Article 24

## LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
East Staffordshire and South Derbyshire	All plots described in the book of reference and shown on the land plans excluding plots prefixed with 'S' and excluding the plot numbered 115	Carrying out the authorised development granted by this Order and shown on the works plans sheets 1 to 10, including fencing, vegetation clearance, ecological mitigation work (where necessary), topsoil stripping, hedgerow removal, construction of access facilities, taking of access, excavation of shafts and tunnels, pipeline construction work, constructing temporary bridges and culverts, constructing micro-tunnels and shafts, constructing temporary compounds, reinstatement and marking and any other works required for the carrying out of the authorised development.

## SCHEDULE 9

Articles 2, 9, 27 and 35

## PROTECTIVE PROVISIONS

## PART 1

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

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

2. In this Part—

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

“apparatus” means any apparatus within the works limits as follows—

- (a) in the case of a statutory undertaker within paragraph (a) of the definition, electric lines or electrical plant (as defined in section 64 of the Electricity Act 1989<sup>(51)</sup>), belonging to or maintained by the undertaker for the purposes of electricity supply;
- (b) in the case of a statutory undertaker within paragraph (b) of the definition, any gas mains, pipes or other apparatus belonging to or maintained by the undertaker for the purposes of gas supply;
- (c) in the case of a statutory undertaker within paragraph (c) of the definition, water mains, pipes or other apparatus belonging to or maintained by the undertaker for the purposes of water supply; and
- (d) in the case of a statutory undertaker within paragraph (d) of the definition—

<sup>(51)</sup> The definition of “electrical plant” in section 64 was amended by paragraph 38(3) of Schedule 6 to the Utilities Act 2007.

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- (i) any drain or works vested in the statutory undertaker under the Water Industry Act 1991<sup>(52)</sup>; 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;

“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<sup>(53)</sup>;
- (c) a water undertaker<sup>(54)</sup>; and
- (d) a sewerage undertaker,

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

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

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

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

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

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

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<sup>(52)</sup> Section 102(4) was amended by section 96 of the Water Act 2003. Section 104 was amended by section 96 of, and by Part 3 of Schedule 9 to, the Water Act 2003 and by section 42(3) of the Flood and Water Management Act 2010 (c.29).

<sup>(53)</sup> 1986 c.44. “Gas transporter” is defined in section 7. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000.

<sup>(54)</sup> “Water undertaker” is defined in Schedule 1 to the Interpretation Act 1978.



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(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 (arbitration), and after the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part.

(5) Despite anything in sub-paragraph (4), if the undertaker gives notice in writing to the statutory undertaker in question that it desires itself to execute any work or part of any work in connection with the construction or removal of apparatus, that work, instead of being executed by the statutory undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the statutory undertaker.

(6) Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

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

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

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

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

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

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

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

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

- (3) If in accordance with the provisions of this Part—
- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
  - (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by undertaker or, in default of agreement, is not determined by arbitration in accordance with article 34 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding those which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

- (4) For the purposes of sub-paragraph (3)—
- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
  - (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

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

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

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

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

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

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

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## PART 2

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

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

2. In this Part—

“2003 Act” means the Communications Act 2003;

“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<sup>(55)</sup>;

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

“electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act<sup>(56)</sup>;

“electronic communications code network” means—

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

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

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

3. The exercise of the powers conferred by article 27 (statutory undertakers) is subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984<sup>(57)</sup>.

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

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the reasonable and proper cost incurred by the operator in making good such damage or restoring the supply as the case may be and must make proper and reasonable compensation to an operator for any other expenses, loss, damages, penalty or costs incurred by it.

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

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker which, if it withholds

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<sup>(55)</sup> Paragraph 1(3A) was added to the code (Schedule 2 to the Telecommunications Act 1984) by paragraph 4 of Schedule 3 to the Communications Act 2003.

<sup>(56)</sup> “The electronic communications code” is defined in section 106(1).

<sup>(57)</sup> 1984 c.12. Paragraph 23 was amended by paragraph 68 of Schedule 25 to the Water Act 1989 (c.15), Schedule 27 to that Act, Schedule 18 to the Electricity Act 1989 and paragraphs 5 and 8 of Schedule 3 to the Communications Act 2003.

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

5. This Part does not apply to—

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

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

## PART 3

### FOR THE PROTECTION OF NETWORK RAIL

1. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and Network Rail and, where paragraph 15 applies, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Part—

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

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

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of the powers under section 8 of the Railways Act 1993<sup>(58)</sup>;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes; and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006<sup>(59)</sup>) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

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

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

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

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

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(58) 1993 c.43. Section 8 was amended by paragraph 4 of Schedule 17 and Part 4 of Schedule 31 of the Transport Act 2000 (c.38), paragraph 3 and 5 of Schedule 2 to the Railways and Transport Safety Act 2003 (c.20) and paragraph 3 of Schedule 1 and Part 1 of Schedule 13 to the Railways Act 2005 (c.14).

(59) 2006 c.46.

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

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

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

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

**4.—**(1) The undertaker must not exercise the powers conferred by articles 15 (authority to survey and investigate the land), 18 (compulsory acquisition of new rights), article 24 (temporary use of land for carrying out authorised development) or 25 (temporary use of land for maintaining authorised development) or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act<sup>(60)</sup> in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld or delayed but may be given subject to reasonable conditions.

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

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval, the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on

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<sup>(60)</sup> Section 272 was amended by paragraph 103 of Schedule 17 to the Communications Act 2003.

the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

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

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

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

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

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

**7.** The undertaker must—

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

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

**9.—(1)** If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months

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

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work, and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a), provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

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

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

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it must be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, be required to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

**11.—**(1) In this paragraph—

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

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or

used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

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

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

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to paragraph (a).

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

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

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and



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(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a), any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph, the reference in article 34 (arbitration) to a single arbitrator to be agreed between the parties must be read as a reference to the Institution of Electrical Engineers.

**12.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

**13.** The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail, and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

**14.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the date on which this Order is made by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

**15.—(1)** The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission. The fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision does not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand, and no settlement or compromise of such a claim or demand must be made without the prior written consent of the undertaker.

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

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

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

(6) In this paragraph—

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

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

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

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

**18.** The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works or land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

**19.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

**20.** The undertaker must give written notice to Network Rail if any submission is proposed to be made by the undertaker for the Secretary of State’s certification, under article 33 (certification of plans, etc.) and any such notice must be given no later than 28 days before any such submission is made and must describe or give (as appropriate)—

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

**21.** The undertaker must, no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 33 (certification of plans, etc.) are

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certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read-only memory.

## PART 4

### FOR THE PROTECTION OF THE CANAL & RIVER TRUST

1. The provisions of this Part have effect for the protection of Canal & River Trust, unless otherwise agreed in writing between the undertaker and Canal & River Trust.

2. In this Part—

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

“engineer” means an engineer appointed by Canal & River Trust and approved by the undertaker for the purposes of this Order;

“Canal & River Trust” means the Canal & River Trust acting as a trustee of the Waterways Infrastructure Trust or any successor body performing the same functions which holds any waterways within the works limits;

“code of practice” means the code of practice for works affecting British waterways (April 2010) as amended from time to time;

“plans” includes sections, designs, design data, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), programmes and details of the extent, timing and duration of any proposed use or occupation of any Canal & River Trust property;

“specified work” means so much of any of the authorised development to be situated upon, across, under, over or within the waterway or that may in any way adversely affect the waterway;

“Canal & River Trust property” means any land owned by Canal & River Trust within the works limits and includes land covered with water, sub-soil, air space and waterways;

“1940 Conveyance rights” means such rights as may be enjoyed by Canal & River Trust over plot 119 (as shown on the land plans) pursuant to a conveyance dated 23rd May 1940 as detailed in registered title number DY 160721;

“waterway” means the canal within the works limits and includes any pond or other waterway or course situated on Canal & River Trust property, any works, services, apparatus, equipment, lands (including subsoil) or premises belonging to or under the control of Canal & River Trust and held or used by it in connection with its statutory functions.

3.—(1) Where, under this Part or anywhere else under this Order, Canal & River Trust (or the engineer) is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Canal & River Trust must observe the provisions of the code of practice for works affecting waterways and, where the code of practice is adhered to and its provisions observed, such consent must not be unreasonably withheld. For the avoidance of doubt, any consent may be issued subject to reasonable conditions including any condition which requires compliance with the code of practice or any applicable part thereof and in respect of article 14 (discharge of water), it is reasonable to impose conditions requiring the payment of such charges as are typically charged by the owner of the relevant waterway.

(2) In so far as any specified work or the acquisition of rights under or over or use of Canal & River Trust property is or may be subject to the code of practice, Canal & River Trust must—

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

4.—(1) The undertaker must not exercise the powers conferred by article 18 (compulsory acquisition of new rights, etc.) or the powers conferred by section 11(3) of the 1965 Act against Canal & River Trust in respect of any Canal & River Trust property.

(2) The undertaker may exercise the powers conferred by articles 19 (power to override easements and other rights) and 20 (private rights of way) in respect of the 1940 Conveyance rights only if it complies with sub-paragraphs (3) and (4).

(3) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any Canal & River Trust property, unless preventing such access is with the consent of Canal & River Trust.

(4) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act in relation to any right of access of Canal & River Trust to Canal & River Trust property, but such right of access may be diverted with the consent of Canal & River Trust.

5.—(1) The undertaker must, before commencing construction of any specified work or carrying out any works on Canal & River Trust property, supply to Canal & River Trust proper and sufficient plans of that work for the reasonable approval (having regard to the undertaker's timetable for the construction of the authorised development) of the engineer, and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration in accordance with article 34 (arbitration).

(2) If by the end of the period of 28 days beginning with the date on which such plans have been supplied to Canal & River Trust the engineer has not intimated disapproval of those plans and the grounds of disapproval, the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a period of 14 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the 14 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

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

(4) When signifying approval of the plans, the engineer may specify any protective works (whether temporary or permanent) that in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of the waterway or the continued safe and efficient use of the waterway or any Canal & River Trust property, and such protective works (which for the avoidance of doubt may include requirements to fence any proposed works in order to separate the same from the waterways, ponds or watercourses situated on Canal & River Trust property either on a permanent or temporary basis) as may be reasonably necessary for those purposes must be constructed by the undertaker, as agreed between the parties or settled by arbitration in accordance with article 34 (arbitration), and such protective works must be carried out at the expense of the undertaker with all reasonable dispatch, and the

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undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

**6.—(1)** Any specified work and any protective works to be constructed by virtue of paragraph 5(3) must, when commenced, be constructed—

- (a) with all reasonable dispatch (having regard to the undertaker's timetable for construction of the authorised development) in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage or disturbance as is possible to the waterway;
- (d) in such a manner to ensure that no materials are discharged or deposited into any stream, watercourse, waterway, pond or any other water feature on or forming part of Canal & River Trust property; and
- (e) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of the waterway.

(2) If any damage to the waterway is caused by the carrying out of, or in consequence of, the construction of a specified work, the undertaker must make good such damage and must pay to Canal & River Trust all reasonable and proper expenses that Canal & River Trust may incur or may be put to and reasonable and proper compensation for any loss which it may sustain by reason of such damage, interference or obstruction.

(3) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligent act or default of Canal & River Trust or its servants, contractors or agents or any liability on Canal & River Trust with respect to any damage, costs, expenses or loss attributable to the negligent act or default of the undertaker or its servants, contractors or agents.

**7.** The undertaker must—

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

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

**9.** The undertaker must repay to Canal & River Trust all reasonable and proper fees, costs, charges and expenses reasonably incurred by Canal & River Trust in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work.

**10.** If at any time during or after the completion of a specified work, Canal & River Trust gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of the waterway, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect the operation of the waterway.

**11.**—(1) The undertaker must pay to Canal & River Trust all reasonable and proper costs, charges, damages and expenses not otherwise provided for in this Part that may be reasonably incurred by Canal & River Trust—

- (a) by reason of the existence, construction or maintenance of a specified work; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the undertaker must indemnify and keep indemnified Canal & River Trust from and against all reasonable and proper claims and demands arising out of or in connection with a specified work or any such act or omission. The fact that any act or thing may have been done by Canal & River Trust on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision does not (if it was done without negligence on the part of Canal & River Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under this sub-paragraph.

(2) Canal & River Trust must give the undertaker reasonable notice of any such claim or demand, and save as such conduct would be contrary to law no settlement or compromise of such a claim or demand must be made without the prior written consent of the undertaker, such consent not to be unreasonably withheld or delayed.

**12.** Canal & River Trust must, on receipt of a written request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part.

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

**14.** The undertaker and Canal & River Trust may enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any Canal & River Trust property shown on the works or land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such Canal & River Trust property; and
- (c) any rights and obligations (whether or not statutory) of Canal & River Trust relating to any of Canal & River Trust property or any lands, works or other property referred to in this paragraph.

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

**16.** The undertaker must repay to Canal & River Trust all reasonable fees, costs, charges and expenses reasonably incurred by Canal & River Trust—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

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- (c) in respect of the employment or procurement of the services of any persons whom it must be reasonably necessary to appoint for inspecting, signalling, watching and lighting Canal & River Trust property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or incident arising from the construction or failure of a specified work; and
- (d) in respect of any additional temporary lighting of Canal & River Trust property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

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

(2) If during the construction of a specified work by the undertaker, Canal & River Trust gives notice to the undertaker that Canal & River Trust desires itself to construct that part of the specified work that in the opinion of the engineer is endangering the stability of Canal & River Trust property or the safe operation of any waterway then, if the undertaker decides that part of the specified work is to be constructed, Canal & River Trust must assume construction of that part of the specified work, and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Canal & River Trust all reasonable expenses to which Canal & River Trust may be put and compensation for any loss which it may suffer by reason of the execution by Canal & River Trust of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 16, provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

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

## PART 5

### FOR THE PROTECTION OF NATIONAL GRID GAS PLC AND NATIONAL GRID ELECTRICITY TRANSMISSION PLC

#### **Application**

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

#### **Interpretation**

2. In this Part—

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

“apparatus” means any apparatus within the works limits as follows—

- (a) electric lines or electrical plant (as defined in section 64 of the Electricity Act 1989), belonging to or maintained by National Grid Electricity; and
- (b) any gas mains, pipes or other apparatus belonging to or maintained by National Grid Gas for the purposes of gas supply,

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, across, along or upon such land;

“maintain”, in relation to any apparatus or alternative apparatus of the statutory undertaker, does not have the meaning given in article 2 (interpretation) but includes the ability and right to construct, use, repair, alter, inspect, renew and remove; and “maintenance” must be construed accordingly;

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

“statutory undertaker” means—

- (a) National Grid Gas as a gas transporter within the meaning of Part 1 of the Gas Act 1986; and
- (b) National Grid Electricity as a licence holder within the meaning of Part 1 of the Electricity Act 1989(61).

### **Certain provisions not to apply where relations regulated by Part 3 of 1991 Act**

3. Except for paragraphs 7 (retained apparatus: protection of National Grid Gas), 8 (retained apparatus: protection of National Grid Electricity), 9 (expenses) and 10 (indemnity), this Part does not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

### **Acquisition of apparatus and overriding of easements, etc.**

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

### **Removal of apparatus**

5.—(1) If, in the exercise of any agreement reached as referred to in paragraph 4 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part, and any right of a statutory undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in question in accordance with sub-paragraphs (2) to (5).

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(61) See section 3A(8) for the construction of “licence holder”. Section 3A was substituted by section 13 of the Utilities Act 2000.



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(2) If, for the purpose of executing any works in, on, over or under any land purchased, held, appropriated or used under this Order or in, on, over or under any land within the works limits, the undertaker requires the removal of any apparatus placed in that land, it must give to the statutory undertaker in question 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed, and in that case (or if in consequence of the exercise of any powers conferred by this Order the statutory undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the statutory undertaker to its reasonable satisfaction (taking into account paragraph 6(1)) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) subsequently, the maintenance of that apparatus.

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between the statutory undertaker in question and the undertaker (both parties acting reasonably).

(5) 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 (arbitration), and after the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part.

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

6.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to the statutory undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the statutory undertaker in question (both parties acting reasonably) and must be no less favourable on the whole to the statutory undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by the statutory undertaker.

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

### **Retained apparatus: protection of National Grid Gas**

7.—(1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to, or will or may affect, any apparatus belonging to or maintained by National Grid Gas (the “statutory undertaker”) the removal of which has not been required by the undertaker under paragraph 5(2) or otherwise, the undertaker must submit to the statutory undertaker a plan.

- (2) In relation to works which will or may—
- (a) be situated on, over, under or within 15 metres measured in any direction of any apparatus;
  - (b) in the case of demolition works, be within 150 metres measured in any direction of any apparatus;
  - (c) (wherever situated) impose any load directly upon any apparatus; or
  - (d) involve embankment works within 15 metres of any apparatus,
- the plan to be submitted to the statutory undertaker under sub-paragraph (1) must be detailed, including a method statement and describing—
- (e) the exact position of the works;
  - (f) the level at which these are proposed to be constructed or renewed;
  - (g) the manner of their construction or renewal including details of excavation and positioning of plant;
  - (h) the position of all apparatus; and
  - (i) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.
- (3) The undertaker must not commence the construction or renewal of any works to which sub-paragraph (2) applies until the statutory undertaker has given written approval of the plan so submitted.
- (4) Any approval of the statutory undertaker required under sub-paragraph (3)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and
  - (b) must not be unreasonably withheld or delayed.
- (5) In relation to a work to which sub-paragraph (2) applies, the statutory undertaker may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (6) Works executed under sub-paragraph (1) must be executed only in accordance with the plan, submitted under that sub-paragraph or as relevant sub-paragraph (5), as amended from time to time by agreement between the undertaker and the statutory undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the execution of those works.
- (7) Where the statutory undertaker requires any protective works to be carried out either by itself or by the undertaker (whether of a temporary or permanent nature), it must (except in an emergency) give the undertaker notice of such requirement within 56 days after the submission by the undertaker of the plan referred to in sub-paragraph (1). Such protective works must be carried out with all reasonable dispatch with all reasonable endeavours being used to complete them within 3 months after the expiry of the period of 56 days and to the statutory undertaker's reasonable satisfaction prior to the carrying out of any works referred to in sub-paragraph (1).
- (8) If the statutory undertaker in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 6 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 5(2).
- (9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan,

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instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(10) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the statutory undertaker notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works within the scope of this paragraph, the undertaker must comply with National Grid Gas' policies for safe working in proximity to gas apparatus (Specification for safe working in the vicinity of National Grid, high pressure gas pipelines and associated installation requirements for third parties T/SP/SSW22) and the Health and Safety Executive's guidance HSG47 (Avoiding danger from underground services).

### **Retained apparatus: protection of National Grid Electricity**

8.—(1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to, or will or may affect, any apparatus belonging to or maintained by National Grid Electricity (the “statutory undertaker”), the removal of which has not been required by the undertaker under paragraph 5(2) or otherwise, the undertaker must submit to the statutory undertaker a plan.

(2) In relation to works which will or may—

- (a) be situated on, over, under or within 8.1 metres measured in any direction of any apparatus; or
- (b) involve embankment works within 8.1 metres of any apparatus,

the plan to be submitted to the statutory undertaker under sub-paragraph (1) must be detailed, including a method statement and describing—

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

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

(4) Any approval of the statutory undertaker required under sub-paragraph (3)—

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

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

(6) Works executed under sub-paragraph (1) must be executed only in accordance with the plan, submitted under that sub-paragraph or as relevant sub-paragraph (5), as amended from time to time

by agreement between the undertaker and the statutory undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the execution of those works.

(7) Where the statutory undertaker requires any protective works to be carried out either by itself or by the undertaker (whether of a temporary or permanent nature) it must (except in an emergency) give the undertaker notice of such requirement within 56 days after the submission by the undertaker of the plan referred to in sub-paragraph (1). Such protective works must be carried out with all reasonable dispatch with all reasonable endeavours being used to complete them within 3 months after the expiry of the period of 56 days and to the statutory undertaker's reasonable satisfaction prior to the carrying out of any works referred to in sub-paragraph (1).

(8) If a statutory undertaker in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

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

(10) The undertaker is not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the statutory undertaker notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works within the scope of this paragraph, the undertaker must comply with National Grid Electricity's policies for development near overhead lines (EN43-8) and the Health and Safety Executive's guidance note GS6 "Avoiding danger from overhead power lines".

## **Expenses**

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

- (a) the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation, in the event that the statutory undertaker elects to use compulsory purchase powers to acquire any necessary rights under paragraph 5(3), all costs incurred as a result of such action;
- (b) the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

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- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part.
- (2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part that is re-used as part of the alternative apparatus, that value being calculated after removal.
- (3) If in accordance with the provisions of this Part—
  - (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
  - (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 34 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess save where the undertaker and the statutory undertaker agree (both acting reasonably) it is not possible to obtain the existing type of apparatus, capacity, dimensions or place at the existing depth in which case full costs must be borne by the undertaker.
- (4) For the purposes of sub-paragraph (3)—
  - (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
  - (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.
- (5) An amount which apart from this sub-paragraph (5) would be payable to a statutory undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## **Indemnity**

**10.**—(1) Subject to sub-paragraph (3), if by reason, or in consequence, of the construction of any such works authorised by this Part or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part or any subsidence resulting from any of those works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of the statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the statutory undertaker, or the statutory undertaker becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the proper and reasonable cost reasonably and properly incurred by the statutory undertaker in making good such damage or restoring the supply; and

(b) indemnify that statutory undertaker for any other expenses, loss, demands, proceedings, damages, claims penalty or costs incurred by or recovered from the statutory undertaker, by reason or in consequence of any such damage or interruption or the statutory undertaker becoming liable to any third party as aforesaid.

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

(3) The liability of the undertaker under the provisions of this paragraph as to indemnity against claims and liabilities and the making good of or paying compensation for loss, damage or injury does not extend to nor include respectively claims and liabilities and loss, damage or injury caused by reason of the negligence, trespass or default of any person or persons directly or indirectly employed by the statutory undertaker in connection with the carrying out of any works carried out by or on behalf of the statutory undertaker.

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

(5) The statutory undertaker must give the undertaker reasonable notice (being not less than 28 days) of any such claim or demand, and no settlement or compromise may be made without the consent of the undertaker (not to be unreasonably withheld or delayed) which, if it reasonably withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### **Ground subsidence monitoring scheme in respect of statutory undertaker's apparatus**

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

(2) The monitoring scheme must set out—

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

(3) The monitoring scheme required by sub-paragraph (1) must be submitted within 56 days prior to the commencement of any works referred to in paragraph 7(1) or 8 (1). Any requirements of the statutory undertaker must be notified to the undertaker within 28 days of receipt of the monitoring scheme. Thereafter the monitoring scheme must be implemented as approved, unless otherwise agreed in writing with the statutory undertaker.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the extent provided for in sub-paragraph (2) (e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a "mitigation scheme") must be submitted to the statutory undertaker for approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the statutory undertaker

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save that the statutory undertaker retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and may recover any such costs in accordance with paragraph 9.

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

### **Enactments and agreements**

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

### **Co-operation**

13. Where in consequence of the proposed construction of any of the authorised development, the undertaker or the statutory undertaker requires the removal of apparatus under paragraph 5(2) or a statutory undertaker makes requirements for modifications to the undertaker's works or for the protection or alteration of apparatus under paragraph 7(5) or (7) or 8(5) or (7), the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development with the need to ensure the safe and efficient operation of the statutory undertaker's undertaking, and the statutory undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

### **Access**

14. If in consequence of any agreement reached in accordance with paragraph 5 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable the statutory undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

15.—(1) Except for differences or disputes arising under paragraphs 5(1), 5(2), 6(1) and 9, any difference or dispute arising between the undertaker and a statutory undertaker under this Part must, unless otherwise agreed in writing between the undertaker and the statutory undertaker, be determined by arbitration in accordance with article 34 (arbitration).

(2) For all disputes arising under this Part, the reference in article 34 to the Secretary of State must be construed as a reference to the president of the Institution of Civil Engineers.

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## EXPLANATORY NOTE

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

This Order authorises RWE Generation UK plc (the “undertaker”) to construct a cross-country pipeline of up to 800 millimetres in diameter (to be known as the Willington C Gas Pipeline) for the conveyance of gas and covering a distance of approximately 27 kilometres starting from the National Transmission System at Yoxall in East Staffordshire and ending at the proposed Willington C Power Station to be constructed at Willington in South Derbyshire, and to carry out all associated works.

This Order permits the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land temporarily for this purpose. This Order also makes provision in connection with the maintenance of the pipeline.

A copy of the plans, book of reference and other documents referred to in this Order and certified in accordance with article 33 may be inspected free of charge during working hours at the offices of East Staffordshire Borough Council, Burton-upon-Trent Customer Service Centre, Market Place, Burton-upon-Trent DE14 1HA and of South Derbyshire District Council, Civic Offices, Civic Way, Swadlincote, Derbyshire DE11 0AH.