
STATUTORY INSTRUMENTS

2017 No. 817

The National Grid (Richborough Connection Project) Development Consent Order 2017

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the National Grid (Richborough Connection Project) Development Consent Order 2017 and comes into force on 24th August 2017.

Interpretation

2.—(1) In this Order, unless the context requires otherwise,—

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

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

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

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

“the 1984 Act” means the Road Traffic Regulation Act 1984**(5)**;

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

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

“the 2008 Act” means the Planning Act 2008**(8)**;

“the 2009 Act” means the Marine and Coastal Access Act 2009**(9)**;

“the access and rights of way and public rights of navigation plans” means the plans listed in Part 2 of Schedule 2 (plans and drawings) as the access and rights of way and public rights of navigation plans, certified by the Secretary of State under article 43 (certification of plans, etc.) for the purposes of this Order;

“the Archaeological Mitigation Written Scheme of Investigation” means the scheme included as part of the CEMP identifying steps to mitigate predicted effects on archaeology, geo-archaeology, palaeo-environmental and historic landscape heritage assets during construction

(1) 1961 c. 33.
(2) 1965 c. 56.
(3) 1980 c. 66.
(4) 1981 c. 66.
(5) 1984 c. 27.
(6) 1990 c. 8.
(7) 1991 c. 22.
(8) 2008 c. 29.
(9) 2009 c. 23.

of the authorised development and certified by the Secretary of State under article 43 (certification of plans, etc.) for the purposes of this Order;

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

“the Biodiversity Mitigation Strategy” means the strategy included as part of the CEMP incorporating measures to avoid, reduce, mitigate and compensate for likely adverse effects on ecological receptors arising from the construction of the authorised development and certified by the Secretary of State under article 43 (certification of plans, etc.) for the purposes of this Order;

“the book of reference” means the book of reference certified by the Secretary of State under article 43 (certification of plans, etc.) for the purposes of this Order;

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

“business day” means Monday to Friday excluding Bank Holidays and other public holidays;

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

“CEMP” means the Construction Environmental Management Plan (Document 5.4.3.C(D)) including the Archaeological Mitigation Written Scheme of Investigation (Document 5.4.3F(B)), the Biodiversity Mitigation Strategy (Document 5.4.3E(C)), the Construction Traffic Management Plan (Document 5.4.3G(C)), the Public Rights of Way Management Plan (Document 5.4.3H(C)), the Outline Waste Management Plan (Document 5.4.3D(A)) and the Noise and Vibration Management Plan (Document 8.8(B)) certified by the Secretary of State under article 43 (certification of plans, etc.) for the purposes of this Order;

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

“the Construction Traffic Management Plan” means the plan included as part of the CEMP incorporating strategies and measures to limit the impact on existing users of the public highway network arising from construction of the authorised development and certified by the Secretary of State under article 43 (certification of plans, etc.) for the purposes of this Order;

“the deemed marine licence” means the marine licence set out in Schedule 9 (deemed marine licence);

“the design drawings” means the drawings listed in Part 3 of Schedule 2 (plans and drawings) as the design drawings and certified by the Secretary of State under article 43 (certification of plans, etc.) for the purposes of this Order;

“electronic transmission” means a communication transmitted—

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

“Environmental Statement” means the environmental statement (January 2016 – Documents 5.1 to 5.4) as submitted by National Grid Electricity Transmission plc to support its application for development consent and the documents contained in or named in the consolidated errata and changes (Document 5.2.1(C));

“the extinguishment of easements, servitudes and other rights plans” means the extinguishment of easements, servitudes and other rights plans listed in Part 6 of Schedule 2 (plans and drawings) and certified by the Secretary of State under article 43 (certification of plans, etc.) for the purposes of this Order;

“foundations” means a foundation placed in land to support pylons and electric lines constructed upon those foundations;

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

“the highway authority” means Kent County Council;

“the land plans” means the plans listed in Part 4 of Schedule 2 (plans and drawings) as the land plans and certified by the Secretary of State under article 43 (certification of plans, etc.) for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 5 (limits of deviation) and shown on the works plans;

“the location plan” means the plan listed in Part 1 of Schedule 2 (plans and drawings) as the location plan and certified by the Secretary of State under article 43 (certification of plans, etc.) for the purposes of this Order;

“main river” has the same meaning as in Part 4 of the Water Resources Act 1991⁽¹⁰⁾;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct or replace the authorised development, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the Environmental Statement, and any derivative of “maintain” must be construed accordingly;

“MMO” means the Marine Management Organisation;

“National Grid” means National Grid Electricity Transmission plc (registered company number 2366977);

“Noise and Vibration Management Plan” means the plan included as part of the CEMP incorporating measures for the management of noise and vibration arising from the construction of the authorised development and certified by the Secretary of State under article 43 (certification of plans, etc.) for the purposes of this Order;

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

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

“the Outline Waste Management Plan” means the plan included as part of the CEMP incorporating measures for the management of waste arising from the construction of the authorised development, certified under article 43 (certification of plans, etc.);

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

“the Public Rights of Way Management Plan” means the plan included as part of the CEMP detailing measures to manage the temporary closure of public footpaths arising from the construction of the authorised development and certified by the Secretary of State under article 43 (certification of plans, etc.) for the purposes of this Order;

“relevant local authority” means, in any given provision of this Order, the local authority for the area to which the provision relates;

“relevant planning authority” means, in any given provision of this Order, the local planning authority for the area to which the provision relates;

“Requirements” means the Requirements as set out in Schedule 3 (requirements) and any numbered Requirement must be construed accordingly;

“sewerage undertaker” means a company appointed under the Water Industry Act 1991⁽¹²⁾ to provide sewerage services in respect of a geographical area of England and Wales;

(10) 1991 c. 57.

(11) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to that Act which are not relevant to this Order.

(12) 1991 c. 57 as amended by S.I. 2009/3104.

“the special category land and crown land plans” means the plans listed in Part 5 of Schedule 2 (plans and drawings) as the special category land and crown land plans and certified by the Secretary of State under article 43 (certification of plans, etc.) for the purposes of this Order;

“statutory undertaker” means, unless the contrary is apparent, any person falling within section 127(8) and section 138(4A) and (4B) of the 2008 Act;

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

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

“the temporary construction works” means Work Nos. 2 and 3;

“traffic” has the same meaning as in section 329(1) of the 1980 Act;

“traffic authority” has the same meaning as in the 1984 Act;

“the traffic regulation order plans” means the plans listed in Part 7 of Schedule 2 (plans and drawings) as the traffic regulation order plans and certified by the Secretary of State under article 43 (certification of plans, etc.) for the purposes of this Order;

“the Trees and Hedgerows to be Removed or Managed Plans” means the plans listed in Part 8 of Schedule 2 (plans and drawings) as the trees and hedgerows to be removed or managed plans and certified by the Secretary of State under article 43 (certification of plans, etc.) for the purposes of this Order;

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

“UK Power Networks” means UK Power Networks Operations Limited (registered company number 03870728) and/or its affiliate South Eastern Power Networks plc (registered company number 03043097) as applicable;

“the UK Power Networks works” means Works Nos. 4A, 4B, 4C, 5A, 5B, 5C, 5D, 6A, 6B, 6C, 6D, 6E and 6F and any associated development in connection with those works, described in Schedule 1 (authorised development);

“the undertaker”—

- (a) in relation to the authorised development, means National Grid; and
- (b) in relation to the UK Power Networks works, and subject to article 6(4), includes UK Power Networks;

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

“the works plans” means the plans listed in Part 9 of Schedule 2 (plans and drawings) as the works plans and certified by the Secretary of State under article 43 (certification of plans, etc.) for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictions are references to restrictions over land which interfere with the interests or rights of another and are for the benefit of land which is acquired, or rights over which are acquired, under this Order.

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

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

(5) References in this Order to points identified by letters, or numbers, are to be construed as references to points so lettered or numbered on the access and rights of way plans.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development).

(7) References in this Order to “Document” followed by a number or numbers are references to documents submitted by National Grid in support of the application for development consent that resulted in the making of this Order.

(8) For the purposes of this Order, “operational use” in relation to any part of the authorised development occurs when that part first transmits electricity at either 132kV or 400kV.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the Requirements to this Order—

- (a) National Grid is granted development consent for the authorised development set out in Schedule 1 (authorised development); and
- (b) Subject to article 6(4), UK Power Networks is granted development consent for the UK Power Networks works.

(2) National Grid may—

- (a) install the authorised development; and
- (b) keep installed the above ground electric lines included in the authorised development except those above-ground electric lines included in the UK Power Networks works.

(3) UK Power Networks may—

- (a) subject to article 6(4), install the UK Power Networks works; and
- (b) keep installed the above-ground electric lines included in the UK Power Networks works.

(4) The authorised development must be constructed, installed and kept installed in the lines and situations shown on the Works Plans in Schedule 2 (plans and drawings), subject to article 5 (limits of deviation) and to the Requirements set out in Schedule 3 (requirements).

(5) Schedule 2 (plans and drawings) has effect.

Maintenance of authorised development

4.—(1) National Grid may at any time maintain the authorised development (excluding the UK Power Networks works), except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) UK Power Networks may at any time maintain the UK Power Networks works, except to the extent that this Order or an agreement made under this Order provides otherwise.

Limits of deviation

5. In carrying out the authorised development for which it is granted development consent by article 3(1) (development consent etc. granted by the Order) the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans within the limits of deviation relating to that work shown on those plans and carry out construction activities for the purposes of the authorised development anywhere within the Order limits; and

- (b) deviate vertically from the levels of the authorised development shown on the design drawings—
 - (i) to any extent not exceeding 4 metres upwards; or
 - (ii) to any extent downwards as may be found to be necessary or convenient.

Benefit of Order

6.—(1) The provisions of this Order have effect for the benefit of—

- (a) National Grid in respect of the authorised development; and
- (b) Subject to paragraph (4), UK Power Networks in respect of the UK Power Networks works.

(2) UK Power Networks may not carry out the UK Power Networks works under article 3(1)(b) (development consent etc. granted by the Order) except in accordance with the written consent of National Grid, which may be granted subject to reasonable conditions.

(3) If UK Power Networks fails to carry out the UK Power Networks works in accordance with National Grid’s consent, National Grid may give UK Power Networks and the Secretary of State a notice that National Grid intends to carry out the UK Power Networks works under article 3(1)(a) from a date specified in the notice.

(4) On the date specified in the notice referred to in paragraph (3), and subject to paragraph (5)—

- (a) UK Power Networks is to cease to have the benefit of article 3(1)(b);
- (b) UK Power Networks is to cease to be an undertaker for the purposes of the installation of the UK Power Networks Works; and
- (c) References to UK Power Networks in article 29 are to be read as including National Grid.

(5) Where a notice is issued under paragraph (3), paragraph (4) does not affect the following insofar as they apply to UK Power Networks—

- (a) the operation of the following articles of this Order—
 - (i) article 3(3)(b), (4) and (5);
 - (ii) article 4(2);
 - (iii) article 5
 - (iv) this article; and

(b) works done and actions undertaken prior to the date specified in that notice.

(6) The exercise by UK Power Networks of any benefits or rights conferred on it by this Order is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by National Grid.

(7) Paragraph (1) does not apply where the consent granted by this Order is expressed to be for the benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of Order

7.—(1) National Grid, and UK Power Networks in relation to the UK Power Networks works, may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provision of this Order and such related statutory rights as may be agreed between National Grid or UK Power Networks and the transferee; or

(b) grant to another person (“the lessee”) for a period agreed between National Grid or UK Power Networks and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) The Secretary of State must consult the MMO before giving consent to the transfer or grant to another person of the whole or part of the benefit of the provisions of the Deemed Marine Licence.

(3) Where a transfer or grant has been made in accordance with paragraph (1) references in this Order to National Grid or UK Power Networks (as the case may be), except in paragraph (4), is to include references to the transferee or the lessee.

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

Application of the 1990 Act

8.—(1) This article applies where the land is used for the temporary construction works.

(2) Where this article applies, section 57(2) of the 1990 Act (planning permission required for development) applies as if the development consent granted by this Order were planning permission granted for a limited period.

Application of the Community Infrastructure Levy Regulations 2010

9.—(1) The Community Infrastructure Levy Regulations 2010(13) apply to the authorised development as if regulation 5(2) of those Regulations (meaning of “planning permission”) referred to development consent which is deemed to be granted for a limited period by an Order made under section 114(1)(a) of the 2008 Act (grant or refusal of development consent) rather than to planning permission which is granted for a limited period.

(2) Development consent is deemed to be granted for a limited period for the temporary construction works and any other temporary buildings or works authorised by this Order.

PART 3

STREETS

Street works

10.—(1) The undertaker may, for the purposes of the authorised development, enter upon so much of any of the streets specified in column (2) of Schedule 5 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel within or under it;
- (b) tunnel or bore under the street;
- (c) remove or use all earth and materials in or under the street;
- (d) place and keep apparatus in the street;
- (e) maintain apparatus in the street or change its position;
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (e).

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

(3) The powers conferred in paragraphs (1) and (2) are without limitation on the powers of the undertaker under the Electricity Act 1989(14).

(4) In this article “apparatus” has the meaning given in Part 3 of the 1991 Act.

Application of the 1991 Act

11.—(1) Works carried out under this Order in relation to a highway which consists of or includes a carriageway must be treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of the 1991 Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts).

(2) The provisions of the 1991 Act mentioned in paragraph (3) (which, together with other provisions of that Act, apply in relation to the carrying out of street works) and any regulations made, or code of practice issued or approved, under those provisions apply (with necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 13 (temporary stopping up of streets and public rights of way) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

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

- (a) section 54 (advance notice of certain works), subject to paragraph (4);
- (b) section 55 (notice of starting date of works), subject to paragraph (4);
- (c) section 57 (notice of emergency works);
- (d) section 59 (general duty of street authority to co-ordinate works);
- (e) section 60 (general duty of undertakers to co-operate);
- (f) section 68 (facilities to be afforded to street authority);
- (g) section 69 (works likely to affect other apparatus in the street);
- (h) section 71 (materials, workmanship and standard of reinstatement);
- (i) section 76 (liability for cost of temporary traffic regulation); and
- (j) section 77 (liability for cost of use of alternative route);

and all such other provisions as apply for the purposes of the provisions mentioned in sub-paragraphs (a) to (j).

(4) Sections 54 and 55 of the 1991 Act as applied by paragraph (1) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

Power to alter layout, etc. of streets

12.—(1) The undertaker may for the purposes of carrying out the authorised development temporarily alter the layout of or carry out any works in a street specified in column (1) Schedule 6 (streets subject to temporary alteration of layout) in the manner specified in relation to that street in column (2).

(2) Without limitation on the specific powers conferred by paragraph (1), but subject to paragraph (4), the undertaker may, for the purposes of constructing and maintaining the authorised development, temporarily alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limiting the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footpath, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street;
- (d) make and maintain crossovers and passing places;
- (e) carry out works for the provision or alteration of parking places, loading bays and cycle tracks; and
- (f) execute any works to provide or improve sight lines required by the highway authority.

(3) The undertaker must restore to the reasonable satisfaction of the street authority any street that has been temporarily altered under this article.

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

(5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

Temporary stopping up of streets and public rights of way

13.—(1) During and for the purposes of carrying out the authorised development, the undertaker may temporarily stop up, alter or divert any street or public right of way shown on the access and rights of way plans or within the Order limits and may for any reasonable time—

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

(2) Without limitation on the scope of paragraph (1), the undertaker may use as a temporary working site any street or public right of way which has been temporarily stopped up, altered or diverted under the powers conferred by this article.

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

(4) Without limitation on the scope of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets or public rights of way specified in columns (1) and (2) of Parts 1 and 2 of Schedule 7 (streets or public rights of way to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the access and rights of way plans, in column (3) of that Schedule, and, if it does so in respect of a street or public right of way specified in Part 1 of Schedule 7, must provide the temporary diversion as specified in column (4) of that Part.

- (5) The undertaker must not temporarily stop up, alter or divert—
- (a) any street or public right of way specified as mentioned in paragraph (4) without first consulting the street authority; and
 - (b) any other street or public right of way without the consent of the street authority which may attach reasonable conditions to any consent.
- (6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.
- (7) If a street authority which receives an application for consent under paragraph (5)(b) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

Access to works

14.—(1) The undertaker may, for the purposes of the authorised development and with the consent of the relevant planning authority, after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If a relevant planning authority which receives an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

Agreements with street authorities

- 15.**—(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the construction of any new street including any structure carrying the street over or under an electric line authorised by this Order;
 - (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under an electric line authorised by this Order;
 - (c) any stopping up, alteration or diversion of a street authorised by this Order; or
 - (d) the carrying out in the street of any of the works referred to in article 10 (street works).
- (2) Such an agreement may, without limitation on the scope of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
 - (b) include an agreement between the undertaker and the street authority specifying a reasonable time for the completion of the works; and
 - (c) contain such terms as to payment and other matters as the parties consider appropriate.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

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

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991(15) (right to communicate with public sewers).

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

(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; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

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

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

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010(16).

(8) This article does not permit any activity listed in paragraph 3(1) of Schedule 21 to the Environmental Permitting (England and Wales) Regulations 2010.

(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application that person is deemed to have granted consent or given approval, as the case may be.

(10) 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(17), an internal drainage board, a joint planning board, a local authority, the highway authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in those Regulations.

Protective work to buildings

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

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first brought into operational use.

(15) 1991 c. 56. Section 106 was amended by the Water Act 2003 (c. 37), sections 36(2) and 99 subject to the transitional provisions contained in article 6 of, and Schedule 3 to, S.I. 2004/641. There are other amendments to section 106 which are not relevant to this Order.

(16) S.I. 2010/675.

(17) 1964 c. 40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c. 42), section 63(1) and Schedule 3, paragraph 9(1) and (2).

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

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

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

(5) Before exercising—

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

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 48 (arbitration).

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

(8) Where—

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

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

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

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

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

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

Authority to survey and investigate the land

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

- (a) survey or investigate the land;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes, boreholes or excavations in such positions on the land as the undertaker thinks fit for the purposes of installing or keeping installed the authorised development on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations and monitoring 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, boreholes or excavations.

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

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

- (a) must, if so required, before or after entering the land, produce written evidence of their authority to do so;
- (b) must, before entering the land, provide in the notice details of the purpose specified in paragraph (1) to survey and investigate the land; and
- (c) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes, boreholes or excavations.

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

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

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

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

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

that authority is deemed to have granted consent.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of right: incorporation of the mineral code

19. Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981⁽¹⁸⁾ (minerals) are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated; and
- (b) for “the acquiring authority” there is substituted “the undertaker”.

Time limit for exercise of authority to acquire rights compulsorily

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

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the 1981 Act as applied by article 25 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)⁽¹⁹⁾.

(2) The authority conferred by article 28 (temporary use of land by National Grid) and article 29 (temporary use of land by UK Power Networks) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

21.—(1) Subject to the provisions of this article the undertaker may acquire compulsorily the rights, and impose the restrictions, over the Order land, described in the book of reference, by creating them as well as by acquiring rights and the benefits of restrictions already in existence.

(2) This article is subject to article 28 (temporary use of land by National Grid) and article 29 (temporary use of land by UK Power Networks).

(3) Subject to section 8 of the 1965 Act (other provisions as to divided land) as substituted by paragraph 5 of Schedule 10 to this Order (modification of compensation and compulsory purchase enactments for creation of new rights) where the undertaker acquires a right over land or imposes a restriction under paragraph (1) the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 10 to this Order 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 restriction.

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

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

⁽¹⁸⁾ 1981 c. 67. Sub-paragraph (5) of paragraph 1 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) and paragraph 8 of Part 3 of that Schedule 2 was amended by section 46 of the Criminal Justice Act 1982 (c. 48). There are other amendments to this Act which are not relevant to this Order.

⁽¹⁹⁾ 1981 c. 66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). There are other amendments to this Act which are not relevant to this Order.

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

Crown rights

22.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the undertaker or any licensee to use, enter on or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1)—

- (a) may be given unconditionally or subject to terms and conditions;
- (b) is deemed to have been given in writing where it is sent electronically.

Extinguishment and suspension of private rights

23.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition of rights or the imposition of restrictions under the Order shall be extinguished in so far as their continuance would be inconsistent with the exercise of the right acquired or the burden of the restriction imposed—

- (a) as from the date of the acquisition of the right or the benefit of the restriction 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 in pursuance of the right;

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictive covenants over land owned by the undertaker which, being within the Order limits, is required for the purposes of this Order, are extinguished on the commencement of any activity authorised by this Order which interferes with or breaches such rights or such restrictive covenants.

(3) Subject to the provisions of this article and article 24 (extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession), all private rights or restrictive covenants 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 or restrictive covenant 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 to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 32 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of it;

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

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

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

(b) any agreement made, in so far as it relates to the authorised development, at any time between the undertaker and the person in or to whom the right or restrictive covenant in question is vested, belongs or benefits.

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

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

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

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

(8) A reference in this article to private rights and restrictive covenants over land includes any trust, incident, easement, wayleave, liberty, privilege, right or advantage annexed to land (including any land forming part of a common, open space or fuel or field garden allotment) and adversely affecting other land, including any natural right to support.

Extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession

24.—(1) This article applies to any Order land specified in Part 1 (National Grid) and Part 2 (UK Power Networks) of Schedule 8 (extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession) and any other Order land of which National Grid takes temporary possession under article 28 (temporary use of land by National Grid) or UK Power Networks takes temporary possession under article 29 (temporary use of land by UK Power Networks).

(2) All private rights or restrictive covenants in relation to apparatus belonging to National Grid or UK Power Networks removed from any land to which this article applies are extinguished from the date on which National Grid or UK Power Networks give up temporary possession of that land under article 28(5) and 28(6) or 29(5) and 29(6), as the case may be.

(3) The extinguishment of rights by paragraph (2) does not give rise to any cause of action relating to the presence on or in the land of any foundations (save for those which lie less than 1.5 metres underground) referred to in article 28(5)(c) and 28(6)(c) or 29(5)(c) and 29(6)(c) (National Grid and UK Power Networks not required to remove foundations when giving up temporary possession).

(4) Schedule 8 has effect.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

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

- (2) The 1981 Act, as so applied, has effect with the following modifications.
- (3) In section 5 (earliest date for execution of declaration), subsection (2) is omitted.
- (4) Section 5A is omitted⁽²⁰⁾.

(5) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 of the 2008 Act (application of compulsory acquisition provisions) to the compulsory acquisition of land under this Order.

Acquisition of subsoil or air-space only

26.—(1) The undertaker may compulsorily acquire such rights, and impose such restrictions, in the subsoil of, or the air-space of, the land referred to in article 21 (compulsory acquisition of rights) as may be required for any purpose for which such rights or restrictions may be acquired in land under that provision instead of acquiring the rights or imposing restrictions over the whole of the land.

(2) Where the undertaker acquires any right or imposes any restriction in the subsoil of, or the air-space over, land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

Rights under or over streets

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

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

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

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

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

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing of 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 by National Grid

28.—(1) National Grid may, in connection with the carrying out of the authorised development—

(a) enter on and take temporary possession of—

- (i) so much of the land specified in column (1) of Part 1 of Schedule 11 (land of which temporary possession may be taken) to exercise the powers described in the book of reference and for the purpose specified in relation to that land in column (2) of

⁽²⁰⁾ Section 5A to the 1981 Act was inserted by section 182(2) of the Housing and Planning Act 2016 (c.22).

Part 1 of that Schedule relating to the part of the authorised development specified in column (3) of Part 1 of that Schedule; and

(ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;

(b) remove any electric line, electrical plant, buildings, structures, pylons, apparatus and vegetation from that land;

(c) construct temporary works (including the provision of means of access) and buildings on that land; and

(d) construct any works specified in relation to that land in column (2) of Part 1 of Schedule 11, or any other mitigation works.

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

(3) National Grid may not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of land referred to in paragraph 1(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Part 1 of Schedule 11, or

(b) in the case of land referred to in paragraph 1(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless National Grid has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) National Grid must provide the owner of any land of which temporary possession has been taken under this article with written notice of the date of completion of the works for which temporary possession was taken within 28 days of the completion of those works.

(5) Before giving up possession of land of which temporary possession has been taken under paragraph (1)(a)(i), National Grid must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land, but National Grid is not required to—

(a) replace a building, structure, electric line, electrical plant or pylon removed under this article;

(b) restore the land on which any works have been carried out under paragraph (1)(d) insofar as the element of works shown in column (4) of Part 1 of Schedule 11 is concerned;

(c) remove any foundations to a depth greater than 1.5 metres below adjoining ground level; or

(d) remove any pylons or electric lines or underground cables constructed or installed on, over, under, or in that land as part of the authorised development.

(6) Before giving up possession of land of which temporary possession has been taken under paragraph (1)(a)(ii), unless otherwise agreed by the owners of the land, National Grid must either acquire the interest on, over, or in the land in accordance with the provisions of paragraph (3)(b) or remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but National Grid is not required to—

(a) replace a building, structure, electric line, electrical plant or pylon removed under this article;

(b) restore the land on which any works have been carried out under paragraph (1)(d) insofar as the element of works shown in column (4) of Part 1 of Schedule 11 is concerned;

(c) remove any foundations to a depth greater than 1.5 metres below adjoining ground level; or

(d) remove any pylons or electric lines or underground cables constructed or installed on, over, under, or in that land as part of the authorised development.

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

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

(9) 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 (7).

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

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

(12) Nothing in this article prevents National Grid from taking temporary possession more than once in relation to any land specified in Part 1 of Schedule 11.

Temporary use of land by UK Power Networks

29.—(1) UK Power Networks may, in connection with the carrying out of the UK Power Networks works—

(a) enter on and take temporary possession of—

(i) so much of the land specified in column (1) of Part 2 of Schedule 11 (land of which temporary possession may be taken) to exercise the powers described in the book of reference and for the purpose specified in relation to that land in column (2) of Part 2 of that Schedule relating to the part of the authorised development specified in column (3) of Part 2 of that Schedule; and

(ii) any other Order land in respect of the UK Power Networks works in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;

(b) remove any electric lines, electrical plant, buildings, structures, pylons, apparatus and vegetation from that land;

(c) construct temporary works (including the provision of means of access) and buildings on that land; and

(d) construct any works specified in relation to that land in column (2) of Part 2 of Schedule 11, or any other mitigation works.

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

(3) UK Power Networks may not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of land referred to in paragraph 1(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Part 2 of Schedule 11, or

- (b) in the case of land referred to in paragraph 1(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) UK Power Networks must provide the owner of any land of which temporary possession has been taken under this article with written notice of the date of completion of the works for which temporary possession was taken within 28 days of the completion of those works.

(5) Before giving up possession of land of which temporary possession has been taken under paragraph 1(a)(i), UK Power Networks must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but UK Power Networks is not required to—

- (a) replace a building, structure, electric line, electrical plant or pylon removed under this article;
- (b) remove any pylons, electric lines or underground cables constructed or installed on, over, under or in that land as part of the UK Power Networks works;
- (c) remove any foundations to a depth greater than 1.5 metres below adjoining ground level; or
- (d) restore the land on which any works have been carried out under paragraph 1(d) insofar as the element of works shown in column (4) of Part 2 of Schedule 11 is concerned.

(6) Before giving up possession of land of which temporary possession has been taken under paragraph 1(a)(ii), unless otherwise agreed by the owners of the land, UK Power Networks must either acquire the interest on, over, or in the land in accordance with the provisions of paragraph (3) (b) or remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but UK Power Networks is not required to—

- (a) replace a building, structure, electric line, electrical plant or pylon removed under this article;
- (b) remove any pylons, electric lines or underground cables constructed or installed on, over, under or in that land as part of the UK Power Networks works;
- (c) remove any foundations to a depth greater than 1.5 metres below adjoining ground level; or
- (d) restore the land on which any works have been carried out under paragraph 1(d) insofar as the element of works shown in column (4) of Part 2 of Schedule 11 is concerned.

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

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

(9) 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 (7).

(10) Where UK Power Networks takes possession of land under this article, UK Power Networks is not required to acquire the land or any interest in it.

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

(12) Nothing in this article prevents UK Power Networks from taking temporary possession more than once in relation to any land specified in Part 2 of Schedule 11.

Temporary use of land for maintaining the authorised development

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

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

(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 upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

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

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

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

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, 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 under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article “the maintenance periods” in relation to any part of the authorised development means the period of five years beginning with the date on which that part of the authorised development is brought into operational use, except where the authorised development is mitigation planting where “the maintenance periods” means the period of five years beginning with the date on which that part of the mitigation planting is completed.

Special category land

31.—(1) So much of the special category land as shall be required for the purposes of the exercising by the undertaker of the Order rights shall be discharged from all rights, trusts and incidents to which it was previously subject.

(2) So far as the temporary use of land under either article 28 and 29 is concerned, then the discharge in paragraph (1) is only for such time as the land is being used under either of those articles.

(3) In this article—

“Order rights” means rights and powers exercisable over the special category land by the undertaker under article 21 (compulsory acquisition of rights), article 28 (temporary use of land by National Grid) and article 29 (temporary use of land by UK Power Networks); and

“the special category land” means the land identified as forming part of a common, open space, or fuel or field allotment in the book of reference and on the plan entitled “special category land and crown land plans”.

Statutory undertakers

32. Subject to the provisions of Schedule 14 (Protective Provisions), the undertaker may—

- (a) acquire compulsorily interests, rights or impose restrictions over, the land belonging to statutory undertakers shown on the land plans within the Order limits and described in the book of reference; and
- (b) extinguish the rights of, or remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

Recovery of costs of new connections

33.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 32 (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 32 any person who is—

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

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

(3) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003⁽²¹⁾; and

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

(21) 2003 c. 21.

PART 6

MISCELLANEOUS AND GENERAL

Deemed marine licence

34. The undertaker is deemed to have been granted the licence contained in Schedule 9 (deemed marine licence) to this Order, to carry out the works and make the deposits described in that licence and subject to the licence conditions which are deemed to have been attached to the licence by the Secretary of State under Part 4 of the 2009 Act.

Application of landlord and tenant law

35.—(1) This article applies to—

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

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

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

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

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

Operational land for purposes of the 1990 Act

36. 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).

Defence to proceedings in respect of statutory nuisance

37.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽²²⁾ (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order must be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—

⁽²²⁾ 1990 c. 43. Section 82 is amended by section 5 of the Noise and Statutory Nuisance Act 1993 (c. 40), section 106 of, and Schedule 17 to, the Environment Act 1995 (c. 25) and section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16). There are other amendments to this Act which are not relevant to this Order.

- (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974⁽²³⁾; or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
- (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with the Noise and Vibration Management Plan prepared under Requirement 5 of Schedule 3 (requirements) to this Order; or
 - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (prior 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 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Temporary closure of, and works in, the river Stour

38.—(1) The undertaker may, in connection with the construction of the authorised development, temporarily interfere with the relevant part of the river.

(2) Without limitation on the powers conferred by paragraph (1) but subject to paragraph (4) the undertaker may, in connection with the construction of the authorised development—

- (a) temporarily moor or anchor barges or other vessels or craft in the relevant part of the river and may load or unload into and from such barges, other vessels or craft equipment, machinery, soil and any other materials in connection with the construction or maintenance of the authorised development; and
- (b) on grounds of health and safety only, temporarily close to navigation the relevant part of the river.

(3) The power conferred by paragraphs (1) and (2) shall be exercised in such a way which secures—

- (a) that no more of the relevant part of the river is closed to navigation at any time than is necessary in the circumstances; and
- (b) that, if complete closure to navigation of the relevant part of the river becomes necessary, all reasonable steps are taken to secure that the period of closure is kept to a minimum and that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use the part so closed.

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

⁽²³⁾ 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 25). There are other amendments to the 1974 Act which are not relevant to this Order.

(5) In this article, “the relevant part of the river” means so much of the river Stour as is shown hatched in yellow on the access and rights of way and public rights of navigation plan.

Traffic regulation

39.—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may at any time, for the purposes of the construction of the authorised development—

- (a) prohibit vehicular access, prohibit waiting of vehicles and regulate vehicular speed by imposing speed restrictions on vehicles in the manner specified in Part 1 of Schedule 12 (traffic regulation) on those roads specified in column (1) and along the lengths and between the points specified in column (2) in the manner specified in column (3) of that Part of that Schedule;
- (b) prohibit vehicular access and prohibit waiting of vehicles in the manner specified in Part 2 of Schedule 12 on those roads specified in column (1) and along the lengths and between the points specified in column (2) in the manner specified in column (3) of that Part of that Schedule; and
- (c) prohibit waiting of vehicles in the manner specified in Part 3 of Schedule 12 on the roads specified in column (1) and along the lengths and between the points specified in column (2) in the manner specified in column (3) of that Part of that Schedule.

(2) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with construction of the authorised development, at any time prior to when the authorised development first becomes operational—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the maximum speed, direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

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

(3) The undertaker must not exercise the powers in paragraphs (1) and (2) unless it has—

- (a) given not less than 28 days’ notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker’s intention as provided for in subparagraph (a).

(4) Any prohibition, restriction or other provision made by the undertaker under paragraph (1) or (2)—

- (a) has effect as if duly made by—
 - (i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act (power of local authorities to provide parking places),

and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 12 (traffic regulation) to which the prohibition, restriction or other provision is subject; and

- (b) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004⁽²⁴⁾ (road traffic contraventions subject to civil enforcement).

(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraphs (1) and (2) at any time prior to the part of the authorised development to which it relates being brought into operational use.

(6) Before complying with the provisions of paragraph (3) the undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated.

(7) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

(8) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraphs (1) and (2) the traffic authority is deemed to have granted consent.

Felling or lopping of trees

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

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

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause any unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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

(4) Development consent granted by this Order is to be treated as planning permission pursuant to Part 3 of the 1990 Act for the purposes of regulation 14 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012⁽²⁵⁾.

Trees subject to tree preservation orders

41.—(1) The undertaker may fell or lop any tree described in Schedule 13 (trees subject to Tree Preservation Orders) and identified on the Trees and Hedgerows to be Removed or Managed Plans, or cut back its roots, if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

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

(2) In carrying out any activity authorised by paragraph (1)—

⁽²⁴⁾ 2004 c. 18.

⁽²⁵⁾ S.I. 2012/605.

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

Protection of interests

42. Schedule 14 (protective provisions) has effect.

Certification of plans, etc.

43.—(1) National Grid must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the access and rights of way and public rights of navigation plans;
- (b) the book of reference;
- (c) the CEMP;
- (d) the Archaeological Mitigation Written Scheme of Investigation;
- (e) the Biodiversity Mitigation Strategy;
- (f) the Construction Traffic Management Plan;
- (g) the Public Rights of Way Management Plan;
- (h) the Outline Waste Management Plan;
- (i) the Noise and Vibration Management Plan;
- (j) the design drawings;
- (k) the land plans;
- (l) the location plan;
- (m) the special category land and crown land plans;
- (n) the extinguishment of easements, servitudes and other rights plans;
- (o) the traffic regulation order plans;
- (p) the Trees and Hedgerows to be Removed or Managed Plans; and
- (q) the works plans,

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

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

Service of notices

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

- (c) with the written consent of the recipient and subject to paragraphs (5) 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⁽²⁶⁾ (references to service by post) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—
- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
 - (b) in any other case, the last known address of that person at the time of service.
- (4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—
- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
 - (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled only where—
- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
 - (b) the notice or document is capable of being accessed by the recipient;
 - (c) the notice or document is legible in all material respects; and
 - (d) the notice or 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) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.
- (9) This article does not exclude the employment of any method of service not expressly provided for by it.
- (10) In this article “legible in all material respects”, in relation to a notice or document, means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Procedure regarding certain approvals, etc.

45.—(1) Where an application or request is submitted to a relevant planning authority, the highway authority, a street authority or the owner of a watercourse, sewer or drain for any consent, agreement or approval required or contemplated by any of the provisions of the Order such consent, agreement or approval, if given, must be given in writing, such agreement not to be unreasonably withheld.

(2) Schedule 4 (discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the Requirements, and any document referred to in any Requirement.

(3) The procedure set out in paragraphs 3, 4 and 5 of Schedule 4 (discharge of requirements) has effect in relation to any other consent, agreement or approval required under this Order where such consent, agreement or approval is granted subject to any condition to which the undertaker objects, or is refused or is withheld.

Amendment of local legislation

46.—(1) The local enactments specified in Part 1 of Schedule 15 (amendment of local legislation), and any byelaws or other provisions made under any of those enactments, and the local byelaws specified in Part 2 of that Schedule are hereby excluded and do not apply insofar as inconsistent with a provision, of or a power conferred by, this Order.

(2) For the purpose of paragraph (1) a provision is inconsistent with the exercise of a power conferred by this Order if and insofar as (in particular)—

- (a) it would make it an offence to take action, or not to take action, in pursuance of a power conferred by this Order;
- (b) action taken in pursuance of a power conferred by this Order would cause the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken;

action taken in pursuance of a power or duty under the provisions would or might interfere with the exercise of any work authorised by this Order.

(3) Where any person notifies the undertaker in writing that anything done or proposed to be done by the undertaker or by virtue of this Order would amount to a contravention of a statutory provision of local application, the undertaker must as soon as reasonably practicable, and at any rate within 14 days of receipt of the notice, respond in writing setting out—

- (a) whether the undertaker agrees that the action taken or proposed does or would contravene the provision of local application;
- (b) if the undertaker does agree, the grounds (if any) on which the undertaker believes that the provision is excluded by this article; and
- (c) the extent of that exclusion.

No double recovery

47. 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, or under two or more different provisions of this Order.

Arbitration

48. Subject to article 45 (procedure regarding certain approvals, etc.) and except where otherwise expressly provided for in this Order or unless otherwise agreed between the parties, any difference

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under any provision of this Order 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.

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

Giles Scott
Head of Energy Infrastructure Planning and Coal
Liabilities
Department for Business, Energy and Industrial
Strategy

3rd August 2017