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STATUTORY INSTRUMENTS

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**2021 No. 1259**

**INFRASTRUCTURE PLANNING**

**The South Humber Bank Energy Centre Order 2021**

*Made* - - - - *10th November 2021*

*Coming into force* - - *2nd December 2021*

An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(1) and Part 5 of the Planning Act 2008(2) for an Order granting development consent.

The application was examined by the Examining Authority appointed by the Secretary of State pursuant to Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(3).

The Secretary of State, in accordance with section 104(2) of the 2008 Act, has had regard to the documents and matters referred to in that section which the Secretary of State thinks are both important and relevant to his decision.

The Secretary of State, having considered the representations made and not withdrawn and the application with the documents that accompanied the application, has determined to make an Order giving effect to the proposals comprised in the application.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 114, 115 and 120 of the 2008 Act, makes the following Order—

**PART 1**

**PRELIMINARY**

**Citation and commencement**

**1.** This Order may be cited as the South Humber Bank Energy Centre Order 2021 and comes into force on 2nd December 2021.

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(1) S.I. 2009/2264, as amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 and S.I. 2013/755.  
(2) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).  
(3) S.I. 2010/103, as amended by S.I. 2012/635.

**Interpretation****2.—(1) In this Order—**

- “the 1961 Act” means the Land Compensation Act 1961<sup>(4)</sup>;
- “the 1980 Act” means the Highways Act 1980<sup>(5)</sup>;
- “the 1990 Act” means the Town and Country Planning Act 1990<sup>(6)</sup>;
- “the 1991 Act” means the New Roads and Street Works Act 1991<sup>(7)</sup>;
- “the 2008 Act” means the Planning Act 2008<sup>(8)</sup>;
- “the 2009 Regulations” means the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>(9)</sup>;
- “access and rights of way plan” means the plan submitted under regulation 5(2)(k) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;
- “address” includes any number or address used for the purposes of electronic transmission;
- “Anglian Water” means Anglian Water Services Limited (company number 2366656) whose registered address is Lancaster House Lancaster Way, Ermine Business Park, Huntingdon, Cambridge, United Kingdom PE29 6XU;
- “AOD” means above ordnance datum;
- “apparatus” has the same meaning as in Part 3 of the 1991 Act (street works in England and Wales) save that “apparatus” further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets;
- “authorised development” means the development and associated development described in Schedule 1 (authorised development) to this Order, which is development within the meaning of section 32 of the 2008 Act (meaning of “development”);
- “biodiversity strategy” means the biodiversity strategy dated April 2021 and certified as such by the Secretary of State for the purposes of this Order;
- “the book of reference” means the book of reference submitted under regulation 5(2)(d) of the 2009 Regulations and certified as such by the Secretary of State 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;
- “the charge” means the charge held by Lloyds Bank plc registered at HM Land Registry against title number HS239444 dated 18 December 2018;
- “commence” means the carrying out of a material operation comprised in or carried out for the purposes of the authorised development and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly;
- “electronic transmission” means a communication transmitted—
- (a) by means of an electronic communications network; or
  - (b) by other means but while in electronic form;

<sup>(4)</sup> 1961 c. 33.<sup>(5)</sup> 1980 c. 66.<sup>(6)</sup> 1990 c. 8.<sup>(7)</sup> 1991 c. 22.<sup>(8)</sup> 2008 c. 29.<sup>(9)</sup> S.I. 2009/2264, as amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 and S.I. 2013/755.

“the environmental statement” means the environmental statement submitted under regulation 5(2)(a) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“EP Waste Management Limited” means EP Waste Management Limited (Company No. 12144128) whose registered office is Paradigm Building, 3175 Century Way, Thorpe Park, Leeds, United Kingdom LS15 8ZB;

“EP SHB Limited” means EP SHB Limited (Company No. 02571241) whose registered office is Berger House, 36-38 Berkeley Square, London, United Kingdom W1J 5AE;

“footpath” and “footway” have the same meaning as given in section 329(1) of the 1980 Act;

“framework construction traffic management plan” means the plan dated December 2020 included as annex 28 of appendix 9A of the environmental statement;

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

“the indicative landscape strategy” means the indicative landscape strategy submitted under regulation 5(2)(q) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“the indicative lighting strategy” means the indicative lighting strategy submitted under regulation 5(2)(q) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“the land plans” means the land plans submitted under regulation 5(2)(i) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“Lloyds Bank plc” means Lloyds Bank plc (Company No. 00002065) whose registered office is 25 Gresham Street, London, EC2V 7HN;

“maintain” includes (i) inspect, repair, adjust, alter, refurbish or improve the authorised development and (ii) in relation to any part (but not the whole of the authorised development) remove, reconstruct or replace that part provided those works do not give rise to materially new or materially different environmental effects; and “maintenance” and “maintaining” are to be construed accordingly;

“material operation” has the same meaning as in section 155 of the 2008 Act;

“National Grid” means National Grid Electricity Transmission plc or National Grid Gas plc as the context requires;

“National Grid Electricity Transmission plc” means National Grid Electricity Transmission plc (Company No. 2366977) whose registered office is at 1-3 Strand, London WC2N 5EH;

“National Grid Gas plc” means National Grid Gas plc (Company No. 2006000) whose registered office is at 1-3 Strand, London WC2N 5EH;

“Network Rail” means Network Rail Infrastructure Limited (Company No. 02904587) whose registered office is at 1 Eversholt Street, London NW1 2DN;

“the Order limits” means the limits shown 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 (interpretation)(10);

“public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act

1964 (interpretation)(11), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation;

“relevant planning authority” means the planning authority for the area in which the land to which the provisions of this Order apply is situated;

“requirements” means those matters set out in Schedule 2 (requirements) to this Order;

“requirements discharge schedule” means a document setting out the following information—

- (a) the submissions and approvals that have been made in relation to each condition attached to the SHBEC planning permission;
- (b) the submissions and approvals that the undertaker anticipates are required pursuant to each requirement;
- (c) details of any outstanding applications for discharge of conditions attached to the SHBEC planning permission and which will be subject to article 5(2)(b)(iii); and
- (d) any steps to which paragraph 36 of Schedule 2 applies;

“section 106 agreement” means the agreement made pursuant to section 106 of the 1990 Act between North East Lincolnshire Borough Council and EP SHB Limited dated 11 April 2019 as varied by a deed of variation made between the same parties dated 19 April 2021;

“SHBEC planning permission” means the planning permission for an energy from waste generating station of up to 49.9MW gross generation, granted by North East Lincolnshire Council on 12 April 2019 with reference DM/1070/18/FUL and including any variation and amendment to it;

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

“street” means a street within the meaning of section 48 of the 1991 Act (streets, street works and undertakers), together with land on the verge of a street or between two carriageways, and includes any footpath and “street” includes any part of a street;

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

“street works” means the works listed in article 10(1);

“swept path analysis plan” means the site entrance swept path analysis and visibility splay drawings dated January 2021 or such other alternative plan as the highway authority may approve;

“undertaker” means EP Waste Management Limited or a person who has the benefit of this Order in accordance with articles 8 and 9;

“varied condition” means a condition of the SHBEC planning permission—

- (a) that is imposed at any time under a new planning permission pursuant to section 73 of the 1990 Act (determination of applications to develop land without compliance with conditions previously attached) and which is in variance with the conditions under the original SHBEC planning permission as issued on 12 April 2019;
- (b) which has at any time been varied pursuant to section 96A of the 1990 Act (power to make non-material changes to planning permission or permission in principle); or
- (c) where the numbering of the condition has changed compared to the numbering as originally issued on 12 April 2019;

“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;

(11) 1964 c. 40. Paragraph 9B was inserted into Schedule 2 by paragraph 9 of Schedule 3 of the Transport and Works Act 1992 (c. 42). There are other amendments to the 1964 Act that are not relevant to this Order.

“working day” means any day other than a Saturday, Sunday or English bank or other public holiday; and

“the works plans” means the works plans submitted under regulation 5(2)(j) of the 2009 Regulations and certified as the works plans by the Secretary of State for the purposes of this Order.

(2) All distances, directions, measurements and lengths referred to in this Order are approximate, except the measurements and lengths set out in requirement 3.

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

(4) References in this Order to “numbered works” or “Work No” are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plans.

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

### **Electronic Communications**

3.—(1) In this Order, subject to Article 26—

(a) references to documents, plans, drawings, certificates, or to copies, include references to them in electronic form; and

(b) references to a form of communication being “in writing” include references to an electronic communication that satisfies the conditions in paragraph (3); and “written” and cognate expressions are to be construed accordingly.

(2) If an electronic communication is received outside the recipient’s business hours, it is to be taken to have been received on the next working day.

(3) The conditions are that the communication is—

(a) capable of being accessed by the recipient;

(b) legible in all material respects; and

(c) sufficiently permanent to be used for subsequent reference.

(4) For the purposes of paragraph (3)(b), a communication is legible in all material respects if the information contained in it is available to the recipient to no lesser extent than it would be if transmitted by means of a document in printed form.

(5) In this article “electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000 (general interpretation)(12).

## **PART 2**

### **PRINCIPAL POWERS**

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

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

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plans and within the limits of deviation.

(3) In paragraph (2), “limits of deviation” means the limits of deviation shown for each work number on the works plans.

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(12) 2000 c. 7. As amended by section 406(1) of, and paragraph 158 of Schedule 17 to, the Communications Act 2003 c. 7.

### **Effect of the Order on the SHBEC planning permission**

5.—(1) The undertaker must not commence any part of the authorised development pursuant to this Order until notice has been served on the relevant planning authority.

(2) If the undertaker serves a notice under this article—

(a) there must be no further development under the SHBEC planning permission; and

(b) from the date of the undertaker's notice—

(i) the conditions of the SHBEC planning permission will cease to have effect within the Order limits;

(ii) the requirements apply to development that has taken place or is to take place within the Order limits and which is comprised in the authorised development; and

(iii) any application for discharge of a condition listed in column (1) of Schedule 3 (deemed approval of matters referred to in requirements) which was outstanding at the date of the undertaker's notice will be treated as an application for discharge of the corresponding requirement listed in column (2) of Schedule 3.

(3) Despite paragraph (1), the undertaker may exercise any other powers under this Order in respect of any part of the authorised development prior to, or following service of, notice under paragraph (2).

(4) Without prejudice to the generality of paragraph (3), the undertaker may seek an approval under or take any other action in relation to any requirement prior to or following the service of notice under paragraph (1).

(5) Subject to paragraph (6), where details, plans or any other matters have been approved or agreed by the relevant planning authority under a condition of the SHBEC planning permission in column (1) of Schedule 3 prior to the date on which the undertaker serves notice under paragraph (1) they are deemed to have been approved for the purpose of the corresponding requirement in column (2) of Schedule 3 from the date of the undertaker's notice.

(6) Paragraph (5) does not apply to a varied condition unless the relevant planning authority issues a notice pursuant to paragraph (7).

(7) The relevant planning authority may issue a notice to the undertaker confirming—

(a) that the discharge of details, plans or other matters in paragraph (5) applies to a varied condition; and

(b) the number of the relevant condition and requirement to which the deemed discharge applies in cases where the numbering of the conditions of the SHBEC planning permission has changed compared to those as originally issued on 12 April 2019.

(8) Where paragraph (7)(b) applies, the numbering of the corresponding condition and requirement in Schedule 3 do not apply.

(9) The relevant planning authority may only issue a notice pursuant to paragraph (7) where it has been demonstrated to the satisfaction of that authority that the application of paragraph (5) will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(10) The undertaker must issue a requirements discharge schedule with a notice served under paragraph (2).

(11) The relevant planning authority must, within three weeks of receipt of the requirements discharge schedule, notify the undertaker that the details set out in the requirements discharge schedule—

(a) are agreed; or

(b) are not agreed.

(12) Where paragraph (11)(b) applies, the relevant planning authority must provide details of the parts which it considers are not correct.

(13) The relevant planning authority must include a copy of a notice served by the undertaker under paragraph (2) and a copy of the relevant planning authority's notice under paragraph (11) in the planning register.

(14) In this article, "planning register" means the register which the relevant planning authority is required to maintain pursuant to section 69 of the 1990 Act (register of applications etc.)(13).

### **Maintenance of authorised development**

6.—(1) The undertaker is authorised to, and may at any time, maintain the authorised development subject to any provision in this Order, including the requirements, or to an agreement made under this Order.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

### **Operation of authorised development**

7.—(1) The undertaker is authorised to use and operate the generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required to authorise the operation of a generating station.

### **Benefit of the Order**

8.—(1) Subject to paragraph (2) and article 9 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to Work No. 2(e) in respect of which the Order is for the benefit of the undertaker and EP SHB Limited.

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

9.—(1) Subject to paragraph (4) the undertaker may—

- (a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order (including any of the numbered works) 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 between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be agreed in writing between the undertaker and the lessee.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

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

(4) The consent of the Secretary of State is required for the exercise of the powers in paragraph (1) except where the transferee or lessee is—

- (a) the holder of a licence under section 6 of the Electricity Act 1989 (licences authorising supply, etc.)(14);
  - (b) in relation to a transfer or lease of utility or other infrastructure connection works, the relevant statutory undertaker or licence holder; or
  - (c) in relation to a transfer or lease of any works within a highway, a highway authority responsible for the relevant highway.
- (5) Where the consent of the Secretary of State is not required under paragraph (4) the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).
- (6) The notification referred to in paragraph (5) must state—
- (a) the name and contact details of the person to whom the benefit of the powers are to be transferred or granted;
  - (b) subject to paragraph (7), the date on which the transfer is proposed to take effect;
  - (c) the powers to be transferred or granted;
  - (d) the restrictions, liabilities and obligations that are to apply to the person exercising the powers transferred or granted under paragraph (3); and
  - (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.
- (7) The date specified under paragraph (6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.
- (8) The notice given under paragraph (6) must be signed by the undertaker and the person to whom the benefit of the powers are to be transferred or granted as specified in that notice.
- (9) In this article “relevant statutory undertaker” or “licence holder” means a body—
- (a) who falls within section 127(8) of the 2008 Act (statutory undertakers’ land), is a holder of a licence granted under a statute or other regulatory framework; and
  - (b) whose duties under the licence include owning, operating or maintaining utilities and or infrastructure and their connections.

## PART 3

### STREETS

#### Street works

- 10.—**(1) The undertaker may, for the purposes of the authorised development, enter the streets specified in Schedule 4 (streets subject to street works) and may—
- (a) break up or open the street, or any sewer, drain or tunnel under it;
  - (b) tunnel or bore under the street;
  - (c) place apparatus in the street;
  - (d) maintain apparatus in the street, change its position or remove it; and
  - (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d).

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(14) 1989 c. 29. Section 6 was amended by section 30 of the Utilities Act 2000 (c. 27) and sections 89(3), 136(1), 145(1) and (5) and section 197(9) of, and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20) and articles 2, 6(1) and (2) of S.I. 2012/2400. There are other amendments to this section that are not relevant to this Order.



(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) Where the person carrying out any works under paragraph (1) is not the street authority the provisions of sections 54 (advance notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any such works.

### **Power to alter layout, etc., of streets**

**11.**—(1) The undertaker may for the purposes of the authorised development alter the layout of, or carry out any works in, the street specified in column (2) of Schedule 5 (streets subject to permanent alteration of layout) in the manner specified in column (3).

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraphs (3) and (4), the undertaker may for the purposes of constructing and maintaining the authorised development alter the layout of any street or construct any works in the street and, without limitation on the scope of this paragraph—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge; and
- (b) make and maintain passing places.

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

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

(5) Paragraphs (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are being constructed.

### **Construction and maintenance of new or altered means of access**

**12.**—(1) The means of access specified in Part 1 (those parts of the access to be maintained at the public expense) of Schedule 6 (access) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed by the highway authority, must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the highway authority.

(2) Those parts of each means of access specified in Part 2 (those parts of the access to be maintained by the street authority) of Schedule 6 (access) to be constructed under this Order and which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(3) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(4) For the purposes of a defence under paragraph (3), a court must in particular have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;

- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

(5) Nothing in this article—

- (a) prejudices the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the undertaker is not by reason of any duty under that section to maintain a street to be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act (street works in England and Wales); or
- (b) has effect in relation to the street works with regard to which the provisions of Part 3 of the 1991 Act apply.

(6) Paragraphs (1) and (2) do not apply to any works which are carried out under an agreement made with the street authority pursuant to the 1980 Act.

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

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

- (a) divert the traffic or a class of traffic from the street or public right of way; and
- (b) subject to paragraph (2), prevent all persons from passing along the street or public right of way.

(2) 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 of a street or public right of way under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in column (2) of Schedule 7 (streets to be temporarily stopped up) to the extent specified in column (3) of that Schedule.

(4) The undertaker may not temporarily stop up, alter or divert—

- (a) any street or public right of way specified in paragraph (3) without first consulting the highway authority; and
- (b) any other street or public right of way without the consent of the highway authority and the highway authority may attach reasonable conditions to any such consent.

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

(6) Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way which has been temporarily stopped up under the powers conferred by this article and within the Order limits as a temporary working site.

### Agreements with street authorities

- 14.**—(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 any part of the authorised development;
  - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
  - (c) the maintenance of the structure of any bridge or tunnel carrying a street;
  - (d) any stopping up, alteration or diversion of a street authorised by this Order;
  - (e) the undertaking in the street of any of the works referred to in article 12(1) (construction and maintenance of new or altered means of access); or
  - (f) the adoption, by a street authority which is the highway authority, of works—
    - (i) undertaken on a street which is a publicly maintainable highway; and
    - (ii) which the undertaker and highway authority agree are to be adopted as a publicly maintainable highway.
- (2) If such an agreement provides that the street authority must undertake works on behalf of the undertaker the agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
  - (b) specify a reasonable time for the completion of the works; and
  - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

## PART 4

### SUPPLEMENTAL POWERS

#### Discharge of water

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

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

(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) Except as authorised under this Order, the undertaker must not, in constructing or maintaining works, damage or interfere with the bed or banks of any watercourse forming part of a main river.

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(15) 1991 c. 56. Section 106 was amended by sections 35(1) and (8), 43(2) and 56(7) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99(1), (2), (4), (5)(a), (5)(b), (5)(c) of the Water Act 2003 (c. 37) and section 32 and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(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 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 the entry into controlled waters of any matter whose entry or discharge into controlled waters requires a licence under the Environmental Permitting (England and Wales) Regulations 2016<sup>(16)</sup>.

(8) In this article expressions, excluding “public sewer or drain” and “watercourse”, used both in this article and in the Water Resources Act 1991<sup>(17)</sup>, have the same meaning as in that Act.

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

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

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

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

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

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

(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 of the 1961 Act (determination of questions of disputed compensation).

## **PART 5**

### **OPERATIONS**

#### **Felling or lopping of trees**

**17.**—(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—

<sup>(16)</sup> S.I. 2016/1154.

<sup>(17)</sup> 1991 c. 57.

(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 do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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

(4) The undertaker may not pursuant to paragraph (1) fell or lop a tree within the extent of the highway maintainable at the public expense without the consent of the highway authority.

(5) Save in the case of emergency, the undertaker must not enter any land under paragraph (1) without serving notice of the intended entry on the owners and occupiers of that land and, where the land is a highway maintainable at the public expense, on the highway authority.

(6) The notice under paragraph (5) must be served not less than 14 days before entering the land.

(7) In carrying out any activity authorised by paragraph (1) the duty contained in section 206(1) of the 1990 Act(18) (replacement of trees) does not apply.

## PART 6

### MISCELLANEOUS AND GENERAL

#### **Protective provisions**

18. Schedule 8 (protective provisions) has effect.

#### **Statutory undertakers**

19. Subject to the provisions of Schedule 8 (protective provisions), the undertaker may reposition the apparatus belonging to statutory undertakers.

#### **Apparatus and rights of statutory undertakers in stopped up streets**

20. Where a street is temporarily altered or diverted or its use is temporarily stopped up under article 12 (construction and maintenance of new or altered means of access) or article 13 (temporary stopping up of streets and public rights of way) any statutory utility whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 8 (protective provisions), as if this Order had not been made.

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

21.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 20 (apparatus and rights of statutory undertakers in stopped up streets) 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.

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(18) Section 206 was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008.

(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 20 (apparatus and rights of statutory undertakers in stopped up streets), any person who is—

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

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

(3) This article does not have effect in relation to apparatus to which article 20 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act (street works in England and Wales) applies.

(4) In this article—

- (a) “public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(19) (interpretation of chapter 1); and
- (b) “public utility undertaker” has the same meaning as in the 1980 Act.

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

**22.**—(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**

**23.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as not being operational land).

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(19) 2003 c. 21. There are amendments to this section that are not relevant to this Order.

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

**24.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by persons aggrieved by statutory nuisances)<sup>(20)</sup> in relation to a nuisance falling within section 79(1)(g) of that Act (statutory nuisances and inspections therefor) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the construction of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974<sup>(21)</sup>; or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 (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), 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.

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

**25.**—(1) The undertaker 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 plan;
- (b) the book of reference;
- (c) the environmental statement;
- (d) the land plans;
- (e) the works plans;
- (f) the indicative lighting strategy;
- (g) the biodiversity strategy;
- (h) the framework construction traffic management plan;
- (i) the swept path analysis plan; and
- (j) the indicative landscape strategy;

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.

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<sup>(20)</sup> 1990 c. 43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16); section 79 was amended by sections 101 and 102 of the same Act. There are other amendments not relevant to this Order.

<sup>(21)</sup> 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 25). There are other amendments to the Control of Pollution Act 1974 which are not relevant to this Order.

## Service of notices

26.—(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 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 (references to service by post)(22) 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 that body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at that 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 an 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 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 the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any 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 an electronic transmission 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 seven days after the date on which the notice is given.

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(22) 1978 c. 30.



(9) This article does not exclude the employment of any method of service not expressly provided for by it.

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

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

(2) Save for applications made in relation to requirements, if, within eight weeks after the application or request has been submitted to an authority or an owner as referred to in paragraph (1) of this article (or such longer period as may be agreed in writing with the undertaker) it has not notified the undertaker of its decision (and if it is a disapproval the grounds of disapproval), it is deemed to have approved the application or request.

**Requirements, appeals etc.**

**28.**—(1) Where an application is made to the relevant planning authority for any consent, agreement or approval required by a requirement the undertaker may appeal, in the event that—

- (a) the relevant planning authority refuses that consent, agreement or approval or grants it subject to conditions;
- (b) the relevant planning authority does not give notice of its decision to the undertaker within such period that has been agreed by undertaker and the relevant planning authority;
- (c) on receipt of a request for any further information, the undertaker considers that either the whole or part of the specific information requested by the relevant authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is to be as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and any consultee required to be consulted pursuant to the requirement which is the subject of the appeal (together with the undertaker, these are the “appeal parties”);
- (b) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person (“the appointed person”) to determine the appeal and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for their attention should be sent, the date of such notification being the “start date” for the purposes of this paragraph (2);
- (c) the relevant planning authority and any consultee required to be consulted pursuant to the requirement which is the subject of the appeal must submit written representations to the appointed person in respect of the appeal within ten working days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties must make any counter-submissions to the appointed person within ten working days of receipt of written representations pursuant to sub-paragraph (c); and

- (e) the appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within thirty working days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d).
- (3) The appointment of the person pursuant to paragraph (2)(b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.
- (4) In the event that the appointed person considers that further information is necessary to consider the appeal, the appointed person must notify the appeal parties in writing specifying the further information required and the date by which the information is to be submitted and the appointed person must make any notification and set the date for the receipt of such further information having regard to the timescales in paragraph (2).
- (5) Any further information required under paragraph (4) must be provided by the undertaker to the appointed person, the relevant planning authority and any consultee required to be consulted pursuant to the requirement the subject of the appeal on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten working days of the specified date but otherwise is to be in accordance with the process and time limits set out in paragraphs (2)(c) to (2)(e).
- (6) On an appeal under this paragraph, the appointed person may—
- (a) allow or dismiss the appeal; or
  - (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not).
- (7) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.
- (8) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case and may deal with the application as if it had been made to the appointed person in the first instance.
- (9) The decision of the appointed person on an appeal is to be final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.
- (10) If an approval is given by the appointed person pursuant to this article, it is to be deemed to be an approval for the purpose of Schedule 2 as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person’s determination.
- (11) Save where a direction is given pursuant to paragraph (12) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.
- (12) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

## **Arbitration**

**29.—**(1) Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement,

to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

(2) This article does not apply where any difference under any provision of this Order is between any person and the Secretary of State.

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

*Gareth Leigh*  
Head of Energy Infrastructure Planning  
Department for Business, Energy and Industrial  
Strategy

10th November 2021

## SCHEDULES

### SCHEDULE 1

Article 4

#### AUTHORISED DEVELOPMENT

In the Borough of North East Lincolnshire a nationally significant infrastructure project as defined in sections 14(1)(a) (nationally significant infrastructure projects: general) and 15 (generating stations) of the 2008 Act and associated development within the meaning of section 115(2) (development for which development consent may be granted), comprising—

**Work No. 1**— an electricity generating station located on land at the South Humber Bank Power Station Site, South Marsh Road, near Stallingborough, Lincolnshire, fuelled by refuse derived fuels, with a capacity to process 753,500 tonnes of refuse derived fuel per annum, with a gross generation capacity of up to 95 megawatts at ISO conditions comprising the following works—

- (a) fuel reception and storage facilities, consisting of vehicle ramps, a tipping hall, shredder, fuel storage bunker and cranes;
- (b) a combustion system housed within a boiler hall, consisting of two combustion lines and associated boilers;
- (c) a steam turbine and generator housed within a turbine hall with a cooling system comprising fin fan coolers;
- (d) a bottom ash handling system, including ash storage;
- (e) a flue gas treatment system, including residue and reagent silos;
- (f) a silo or tank for the storage of ammonia or urea based reagents;
- (g) an air-cooled condenser;
- (h) a compressed air system;
- (i) a process effluent storage tank;
- (j) a demineralised water treatment plant and demineralised water storage tanks; and
- (k) indoor storage tanks for boiler water treatment chemicals.

**Work No. 1A**— two emissions stacks and associated emissions monitoring systems.

**Work No. 1B**— administration block, including control room, workshops, stores and welfare facilities.

In connection with and in addition to Work No.s 1, 1A and 1B—

- (a) an electrical switchyard, including generator transformers;
- (b) auxiliary diesel generators and diesel storage tanks;
- (c) pipe racks, pipe runs and cabling;
- (d) fire water pump house and fire water tank;
- (e) internal vehicle access roads, crossings and pedestrian and cycle facilities and routes;
- (f) security gatehouse, barriers and enclosures;
- (g) weighbridges;
- (h) car parking;

- (i) heavy goods vehicle holding area and driver welfare facilities;
- (j) a surface water drainage system, including oil-water separators and attenuation pond; and
- (k) connections between parts of Work No. 1 and each connection comprised in Work No. 2.

**Work No. 2** comprising associated development—

- (a) an underground or overground electrical connection from Work No. 1;
- (b) an underground gas supply pipeline to Work No. 1;
- (c) towns water connection;
- (d) telecommunications connections;
- (e) steam connection; and
- (f) other utility connections.

**Work No. 3**— associated development being landscaping and biodiversity works, comprising soft landscaping including planting and biodiversity mitigation and enhancement measures.

**Work No. 4**— associated development comprising a new site access on to South Marsh Road and works to an existing access on to South Marsh Road.

**Work No. 5**— associated development comprising temporary construction and laydown areas comprising hard standing; laydown and open storage areas, including materials and plant storage; contractor compounds and construction staff office and welfare facilities; generators; concrete batching facilities; vehicle and cycle parking facilities; pedestrian and cycle routes and facilities; security fencing and gates; external lighting; roadways and haul routes; wheel wash facilities and signage.

In connection with and in addition to Work No.s 1, 1A, 1B, 2, 3, 4 and 5, further associated development including—

- (a) external lighting, including lighting columns;
- (b) security fencing, gates, boundary treatment and other means of enclosure;
- (c) closed circuit television cameras and columns and other security measures;
- (d) surface and foul water drainage systems, oil-water separators, including channelling, culverting, crossings and works to existing drainage ditches and systems;
- (e) electric, gas, water, telecommunication and other infrastructure connections and works, and works to alter such services and utilities connections;
- (f) hard and soft landscaping;
- (g) biodiversity mitigation and enhancement measures;
- (h) site establishment and preparation works, including site clearance (including vegetation removal); earthworks (including soil stripping and storage and site levelling) and excavations; temporary fencing; the creation of temporary construction access points; and the temporary alteration of the position of services and utilities apparatus and connections;
- (i) temporary construction laydown areas and contractor facilities, including materials and plant storage and laydown areas; generators; concrete batching facilities; vehicle and cycle parking facilities; pedestrian and cycle routes and facilities; offices and staff welfare facilities; security fencing and gates; external lighting; roadways and haul routes; wheel wash facilities; and signage; and
- (j) vehicle access roads, crossings, parking, and pedestrian and cycle facilities and routes, and, to the extent that it does not form part of such works, further associated development comprising such other works (i) as may be necessary or expedient for the purposes of or in

connection with the relevant part of the authorised development and (ii) which fall within the scope of the works assessed in the environmental statement.

## SCHEDULE 2

Article 4

### REQUIREMENTS

#### **Interpretation**

**1.** In this Schedule—

“arboricultural survey report” means the report dated April 2020 included as appendix 2 of the indicative landscape strategy;

“biodiversity protection plan” means the detail set out in part 6 of the biodiversity strategy;

“coming into operation” or “come into operation” mean the date on which the authorised development first receives commercial deliveries of fuel after commissioning;

“commissioning” means the process of assuring that all systems and components of the authorised development are tested, to verify that they function and are operable in accordance with the design objectives, specifications and operational requirements of the undertaker, prior to the authorised development coming into operation;

“indicative biodiversity mitigation and enhancement plan” means the detail set out in part 8 of the biodiversity strategy;

“the outline drainage strategy” means the outline drainage strategy included as appendix 14B of the environmental statement;

“the permitted preliminary works” means—

- (a) within the area of Work No. 1 works consisting of the removal of existing structures, and site clearance works; and
- (b) within the areas of Work No.s 1, 2, 3, 4 and 5 works consisting of biodiversity management, mitigation and enhancement works, providing these are in accordance with the biodiversity protection plan or any details approved pursuant to requirement 11, wheel cleaning facilities, the installation and diversion of utility services, surveys, and temporary contractors’ facilities; and

references to “Work No. 1” in this Schedule include Work No. 1A and Work No. 1B;

“Royal Mail” means Royal Mail plc (Company No. 08680755) whose registered office is at 100 Victoria Embankment, London EC4Y 0HQ; and

“SCANNER” means Surface Condition Assessment for the National Network of Roads.

#### **Commencement of the authorised development and notices**

**2.—(1)** The authorised development must not be commenced after the expiration of five years from the date this Order comes into force.

(2) Unless such event has already occurred prior to the date of the undertaker’s notice under article 5, the undertaker must notify the relevant planning authority within seven days of each of the following events occurring—

- (a) the start of commissioning of the authorised development; and
- (b) the coming into operation of the authorised development.

### **Approved details and amendments to them**

3.—(1) All relevant details submitted for the approval of the relevant planning authority pursuant to these requirements must be in accordance with the following dimensions—

- (a) maximum main building height – 59 metres AOD (including 2 metre parapet wall on boiler house);
- (b) maximum main building footprint – 210 metres x 110 metres;
- (c) stack height – 102 metres AOD;
- (d) maximum stack diameter – 3 metres per combustion stream; and
- (e) bunker base maximum depth – -8 metres AOD.

(2) Where a requirement requires the authorised development to be constructed in accordance with details approved by the relevant planning authority, the approved details are taken to include any amendments subsequently approved by the relevant planning authority.

### **Requirement for written approval**

4. Where under any of the requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be provided in writing.

### **Detailed design (position and scale)**

5.—(1) In relation to any part of the authorised development comprised in Work No. 1 no development of that part may commence, save for the permitted preliminary works, until details of the final position, finished floor levels, elevations and floor plans of all new permanent buildings and structures have been submitted to and approved by the relevant planning authority. The authorised development must be carried out in accordance with the approved details.

(2) No part of the authorised development may have more than three occupied storeys save for Work No. 1B.

### **Detailed design (appearance)**

6. In relation to any part of the authorised development comprised in Work No. 1 no development of that part may commence, save for the permitted preliminary works, until details of the external appearance, including the colour, materials and surface finishes, of all new permanent buildings and structures have been submitted to and approved by the relevant planning authority. The authorised development must be carried out in accordance with the approved details.

### **Retained trees**

7.—(1) All trees located within Work No. 3 must be retained throughout the construction and operation of the authorised development unless replaced under sub-paragraph (2) or otherwise agreed with the relevant planning authority.

(2) Any tree within Work No. 3 that is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, during the construction or operation of the development must be replaced in the first available planting season with a specimen of the same species unless otherwise agreed with the relevant planning authority.

### **Means of enclosure and hard landscaping**

8.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until the details and position of means of enclosure, circulation areas, hardstandings and all

other hard landscaping for that part have been submitted and approved by the relevant planning authority.

(2) The details submitted under sub-paragraph (1) in respect of Work No. 1 must include details of a 2.5 metre high close board fence along the southern and eastern boundary of Work No. 1, as set out in section 7 and illustrated in figure 1 of the biodiversity strategy.

(3) The details submitted under sub-paragraph (1) in respect of Work No. 5 must include details of a 2.5 metre high close board fence along the eastern boundary of Work No. 5 to the extent that it is coincidental with the Order limits.

(4) The details approved under this requirement must be implemented during the construction of the authorised development and then maintained throughout the operation of the authorised development unless otherwise agreed by the relevant planning authority.

(5) In this requirement, “means of enclosure” means fencing, walls or other means of boundary treatment and enclosure.

### **Lighting scheme**

9.—(1) The authorised development may not come into operation until a scheme for all permanent external lighting to be installed (with the exception of any aviation warning lighting required under requirement 30) has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved under sub-paragraph (1) must be in accordance with the principles of the indicative lighting strategy and include measures to minimise and otherwise mitigate any artificial light emissions during the operation of the authorised development.

(3) The scheme must be implemented as approved prior to the coming into operation of the authorised development and maintained throughout the operation of the authorised development unless otherwise agreed by the relevant planning authority.

### **Soft landscaping**

10.—(1) The permitted preliminary works may start but the authorised development may not come into operation until a scheme of soft landscaping and planting has been submitted to, and approved by, the relevant planning authority.

(2) The scheme submitted and approved under sub-paragraph (1) must include details of—

- (a) materials, and the number, species, sizes and planting positions of any planting;
- (b) measures to protect any existing shrub and tree planting that is to be retained;
- (c) an implementation plan; and
- (d) a future maintenance plan.

(3) The scheme must be implemented within a period of 12 months beginning with the coming into operation of the authorised development and maintained as approved during the operation of the authorised development, unless otherwise agreed with the relevant planning authority.

### **Biodiversity protection**

11.—(1) The biodiversity protection plan must be implemented during the construction of the authorised development, unless otherwise agreed by the relevant planning authority.

(2) No later than 18 months from the commencement of the authorised development a report by a qualified ecologist verifying the implementation of the relevant parts of the biodiversity protection plan and setting out implementation measures for the remaining parts of the biodiversity protection plan must be submitted to the relevant planning authority for approval, unless otherwise agreed by the



relevant planning authority. The implementation measures for the remaining parts of the biodiversity protection plan must be implemented as approved, unless otherwise agreed by the relevant planning authority.

### **Biodiversity mitigation and enhancement**

**12.—**(1) No later than 12 months from submission of the details under requirement 11(2) a biodiversity mitigation and enhancement plan must be submitted to the relevant planning authority for approval.

(2) The plan submitted and approved under sub-paragraph (1) must be in accordance with the principles set out in the indicative biodiversity mitigation and enhancement plan, and must include an implementation timetable, including monitoring and maintenance activities.

(3) The plan approved under sub-paragraph (1) must be implemented in full by the end of the second planting season after the plan is approved and maintained during the operation of the authorised development unless otherwise agreed by the relevant planning authority.

### **Surface water drainage**

**13.—**(1) No part of the authorised development may commence, save for the permitted preliminary works, until the undertaker has consulted with Anglian Water on details of the permanent surface water drainage systems, including a future maintenance plan, the undertaker has then submitted the details to the relevant planning authority and the relevant planning authority has approved those details.

(2) The details submitted and approved under sub-paragraph (1) must be in accordance with the principles set out in sections 2, 4 and 6 of the outline drainage strategy.

(3) The scheme approved under sub-paragraph (1) must be implemented as approved prior to the development coming into operation and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

### **Foul water drainage**

**14.—**(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the permanent foul water drainage systems, including a future maintenance plan, have been submitted to and, after consultation with Anglian Water and the Environment Agency, approved by the relevant planning authority.

(2) The details submitted and approved under sub-paragraph (1) must be in accordance with the principles set out in sections 2 and 5 of the outline drainage strategy.

(3) The scheme approved under sub-paragraph (1) must be implemented as approved prior to the development coming into operation and maintained as approved throughout the operation of the authorised development unless otherwise agreed by the relevant planning authority.

### **Construction environmental management plan**

**15.—**(1) No part of the authorised development may commence until a construction environmental management plan for that part has been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with appendix 5A of the environmental statement and the biodiversity protection plan and incorporate—

- (a) visitor and contractor parking areas;
- (b) a materials management plan;

- (c) materials storage areas;
- (d) wheel cleaning facilities;
- (e) noise, vibration and dust mitigation measures;
- (f) lighting details;
- (g) fence installation (including a timetable for installation) and its retention throughout construction in accordance with paragraph 7.1.1 of the biodiversity strategy;
- (h) tree protection measures throughout construction in accordance with sections 6.6 to 6.8 of the arboricultural survey report;
- (i) waste management in accordance with chapter 16 of the environmental statement; and
- (j) pollution control.

(3) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan unless otherwise agreed with the relevant planning authority.

#### **Construction traffic management and travel planning**

**16.**—(1) No part of the authorised development may commence until the undertaker has consulted with Network Rail on a construction traffic management plan for that part, submitted the plan to the relevant planning authority, and the relevant planning authority has approved the plan.

(2) The plan submitted and approved under sub-paragraph (1) must be in accordance with the framework construction traffic management plan.

(3) The plan submitted and approved under sub-paragraph (1) for Work No. 1 must include—

- (a) details of the routes to be used for the delivery of abnormal indivisible loads and procedures for the notification of these to the local highway authority, Royal Mail and, if the route includes railway assets, Network Rail; and
- (b) a construction worker travel plan (which must be in accordance with the framework construction worker travel plan included as annex 27 of appendix 9A of the environmental statement).

(4) The plan must be implemented as approved throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

#### **Piling**

**17.**—(1) No part of the authorised development comprised within Work No. 1 may commence, save for the permitted preliminary works, until the undertaker has consulted the Environment Agency on a written specification of the type of piling to be used to support the building and structures, the undertaker has submitted that specification to the relevant planning authority, and the relevant planning authority has approved that specification.

(2) The written specification submitted and approved under sub-paragraph (1) must include a scheme to mitigate the effects of the piling with regard to noise to ecological receptors (which must include seasonal piling restrictions and/or the use of continuous flight auger piling as each of those are described in section 7 of the biodiversity strategy) and a scheme to mitigate the effects of the piling with regard to groundwater resources (which must be in accordance with the results of the site investigation carried out, and any remediation strategy submitted, pursuant to requirement 19).

(3) All piling works must be carried out in accordance with the approved written specification unless otherwise agreed with the relevant planning authority.

### **Temporary halting of development on finding unexpected contamination**

**18.** If at any point during construction contamination is found that is not expected in the scheme submitted and approved under sub-paragraph (1) of requirement 19, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the relevant planning authority in writing until requirement 21 has been complied with in relation to the unexpected contamination.

### **Investigation and remediation of contamination**

**19.—(1)** No part of the authorised development may commence, save for the permitted preliminary works, until the undertaker has consulted with the Environment Agency on a scheme for an investigation of the nature and extent of any contamination on the site, whether or not it originates on the site, the undertaker has submitted this scheme to the relevant planning authority, and the relevant planning authority has approved the scheme.

(2) The scheme submitted and approved under sub-paragraph (1) must be in accordance with the principles set out in chapter 12 and appendix 12A of the environmental statement and must be undertaken by competent persons.

(3) The scheme submitted and approved under sub-paragraph (1) must include—

- (a) a survey of the extent, scale and nature of contamination;
- (b) a risk assessment taking into account—
  - (i) human health;
  - (ii) property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
  - (iii) adjoining land;
  - (iv) groundwaters and surface waters;
  - (v) ecological systems; and
  - (vi) archaeological sites and ancient monuments (if applicable); and
- (c) an appraisal of the need for remediation to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and (if applicable) historical environment.

(4) If the appraisal under sub-paragraph (3)(c) identifies the need for remediation then a remediation scheme must be submitted together with the scheme submitted pursuant to sub-paragraph (1).

(5) Any scheme submitted under sub-paragraph (4) must contain an appraisal of the remedial options available and a description of the proposed remediation works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The remediation scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

(6) The schemes submitted under sub-paragraphs 1 and 4 (in the event a remediation scheme under sub-paragraph (4) is required) and approved under sub-paragraph (1) must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

### **Implementation of remediation scheme**

**20.—(1)** In the event that a remediation scheme under requirement 19(4) is required, the relevant part of the authorised development must not commence, save for the permitted preliminary works,

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until any scheme approved under requirement 19(4) has been implemented as approved, unless otherwise agreed by the relevant planning authority.

(2) Following implementation under sub-paragraph (1) (in the event sub-paragraph (1) applies), the undertaker must consult the Environment Agency on a verification report that demonstrates the effectiveness of the remediation scheme which must be submitted to, and approved by, the relevant planning authority prior to the development coming into operation.

### **Procedure in cases of unexpected contamination**

21.—(1) At any time during construction or operation, in the event that contamination is found that was not expected in the scheme submitted and approved under sub-paragraph (1) of requirement 19, the unexpected contamination must be notified in writing to the relevant planning authority before the end of the following working day.

(2) Within three months of the notification made under sub-paragraph (1) all details required by sub-paragraphs (1) and (4) of requirement 19 must be submitted to the relevant planning authority in respect of the unexpected contamination, and the relevant planning authority must consult with the Environment Agency in respect of those details.

(3) Within three months of the approval by the relevant planning authority of the schemes submitted under sub-paragraph (2), the schemes must be implemented as approved unless otherwise agreed by the relevant planning authority.

(4) Within three months of the implementation of the schemes under sub-paragraph (3) a verification report must be prepared in accordance with the requirements of requirement 20 and submitted to the relevant planning authority for approval after consultation with the Environment Agency.

### **Flood risk mitigation**

22.—(1) No part of the authorised development may be commissioned until a scheme for the mitigation of flood risk during operation has, for that part, been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved under sub-paragraph (1) must be in accordance with the flood risk assessment unless otherwise agreed by the relevant planning authority in consultation with the Environment Agency.

(3) The scheme submitted and approved under sub-paragraph (1) must provide for critical equipment assets to be elevated to no lower than 4.60m AOD or, alternatively, adequately protected through flood resistance and resilience measures, and a place of safe refuge to be provided at a level no lower than 4.60m AOD.

(4) The scheme approved under sub-paragraph (1) must be implemented as approved prior to the coming into operation of the authorised development and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(5) In this article, “the flood risk assessment” means the flood risk assessment included as appendix 14A of the environmental statement.

### **Flood warning and evacuation plan**

23.—(1) The authorised development must not be occupied until a flood warning and evacuation plan has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved under sub-paragraph (1) must include provisions to secure the subscription of the authorised development to the Environment Agency’s floodline warnings direct service or equivalent service.

(3) The flood warning and evacuation plan submitted and approved under sub-paragraph (1) must be implemented as approved prior to the authorised development coming into operation and remain in place throughout the operation of the development unless otherwise agreed by the relevant planning authority.

### **Delivery and servicing plan**

**24.**—(1) The authorised development must not come into operation until the undertaker has consulted Network Rail on an operational delivery and servicing plan for all operational HGVs entering and leaving the site, the undertaker has submitted that plan to the relevant planning authority, and the relevant planning authority has approved that plan.

(2) The plan submitted and approved under sub-paragraph (1) must be in accordance with the operational delivery and servicing plan within annex 26 of appendix 9A of the environmental statement unless otherwise agreed by the relevant planning authority.

(3) The plan approved under sub-paragraph (1) must be implemented as approved throughout the operation of the authorised development unless otherwise agreed by the relevant planning authority.

### **Operational travel plan**

**25.**—(1) The authorised development must not come into operation until an operational travel plan has been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved under sub-paragraph (1) must be in accordance with business travel plan guidance published by the local highway authority and in accordance with the framework operational travel plan within annex 7 of appendix 9A of the environmental statement unless otherwise agreed by the relevant planning authority.

(3) The plan approved under sub-paragraph (1) must be implemented as approved throughout the operation of the authorised development unless otherwise agreed by the relevant planning authority.

### **Visibility splays**

**26.**—(1) The authorised development must not come into operation until details of the visibility splays at the proposed new highway access have been submitted to and, after consultation with the local highway authority, approved by the relevant planning authority.

(2) The details submitted to and approved under sub-paragraph (1) must be in accordance with the access and rights of way plan and swept path analysis plan unless otherwise agreed by the relevant planning authority.

(3) The details approved under sub-paragraph (1) must be implemented as approved prior to the coming into operation of the authorised development and maintained throughout the operation of the authorised development, and nothing erected or allowed to grow above 1.05 metres higher than the carriageway level of the adjoining highway within the visibility splays unless otherwise agreed by the relevant planning authority.

### **New highway access**

**27.**—(1) The authorised development must not come into operation until details of the proposed new highway access and highway drainage system have been submitted to and, after consultation with the local highway authority, approved by the relevant planning authority.

(2) The details submitted to and approved under sub-paragraph (1) must include the proposed layout and construction details of the proposed new entrance to the site including the junction and connection with the adopted highway which must be in accordance with the access and rights of way

plan and swept path analysis plan unless otherwise agreed by the relevant planning authority or any details in respect of this new entrance that have been approved under articles 11 or 12.

(3) The details approved under sub-paragraph (1) must be implemented as approved prior to the coming into operation of the authorised development and maintained throughout the operation of the authorised development.

### **Parking**

**28.**—(1) The authorised development must not come into operation until details of the proposed location, type and number of permanent vehicle and bicycle parking spaces have been submitted to and approved by the relevant planning authority.

(2) The details approved under sub-paragraph (1) must be implemented as approved prior to the coming into operation of the authorised development and maintained throughout the operation of the authorised development.

### **Road condition survey**

**29.**—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a survey of the condition of the adopted section of South Marsh Road (east of Hobson Way) has been carried out and details submitted to and approved by the relevant planning authority.

(2) The details submitted to and approved under sub-paragraph (1) must include the results of a survey comprising SCANNER, deflectograph equipment, and supporting road core data with cores taken every 100m, contained in a report detailing the survey methodology and the findings as to the theoretical capacity of the structure of the road based on a million standard axle calculation.

(3) Within six months of the authorised development coming into operation a report must be submitted to the relevant planning authority for approval.

(4) The report submitted and approved under sub-paragraph (3) must contain the results of traffic surveys along South Marsh Road (east of Hobson Way) conducted after the coming into operation of the authorised development and must include information on actual HGV tonnage and volumes and a comparison against the theoretical capacity of the structure of the road contained in the details approved under sub-paragraph (1).

(5) In the event that the report shows the actual HGV tonnage and volumes using the road is in exceedance of the theoretical capacity, and the exceedance can reasonably be attributed to the authorised development, the undertaker must within three months of an approval under sub-paragraph (3), submit details of a scheme of improvement for South Marsh Road (east of Hobson Way) and a programme for implementation to the local highways authority for its approval.

(6) The scheme of improvement approved under sub-paragraph (5) must be implemented by the undertaker as approved.

### **Air safety**

**30.**—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the information that is required by the Defence Geographic Centre of the Ministry of Defence to chart the authorised development for aviation purposes for that part have been submitted to and approved by the relevant planning authority.

(2) The information submitted to and approved under sub-paragraph (1) must include—

- (a) location of development;
- (b) date of commencement of construction;

- (c) anticipated date of completion of construction of tall structures including the emissions stacks;
  - (d) height above ground level of tall structures including the emissions stacks;
  - (e) maximum extension height of any construction equipment; and
  - (f) details of aviation warning lighting to be fitted to the tall structures, which must include fitting the emissions stacks with a minimum intensity 25 candela omni directional flashing red light or equivalent infra-red light fitted at the highest practicable point of the structure.
- (3) The aviation warning lighting details submitted to and approved under sub-paragraph (2)(f) must be implemented in full before the construction of the emissions stacks is complete unless otherwise agreed by the relevant planning authority.
- (4) At the earliest opportunity prior to the date of completion of the construction of the stacks, the anticipated date of construction completion must be submitted to the relevant planning authority.
- (5) All details submitted to and approved under this requirement must be implemented as approved and maintained throughout (to the extent relevant) the construction of the authorised development and the operation of the authorised development unless otherwise agreed by the relevant planning authority.

### **Fuel type**

**31.** Only refuse derived fuel comprising of processed waste from municipal, household, commercial and industrial sources may be used in the combustion system in Work No. 1, except for purposes of start-up or support firing when gas or fuel oil may be used.

### **Fuel storage**

**32.** With the exception of the diesel tank, fuel for the energy recovery facility must not be stored outside of the main building at any time.

### **Decommissioning**

**33.—(1)** Within two years of the date that the undertaker decides to end commercial operation of the authorised development, the undertaker must submit to the relevant planning authority for its approval a decommissioning plan, including a timetable for its implementation and a decommissioning environmental management plan.

(2) The plan submitted to and approved under sub-paragraph (1) must be implemented as approved unless otherwise agreed with the relevant planning authority.

### **Amendments agreed by the relevant planning authority**

**34.—(1)** Where the words “unless otherwise agreed by the relevant planning authority” appear in the requirements—

- (a) whenever the undertaker requests that the relevant planning authority provides its agreement in accordance with those words, the undertaker must provide the relevant planning authority with information on compliance with any document listed in the relevant requirement and any other relevant certified document; and
- (b) any such approval or agreement may only be given in relation to non-material amendments and where it has been demonstrated to the satisfaction of that authority that the subject matter of the approval or agreement sought will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(2) In cases where the requirement or the relevant sub-paragraph requires consultation with specified persons, any such approval or agreement must not be given without the relevant planning authority having first consulted with those persons.

### **Combined heat and power**

**35.**—(1) No part of Work No. 1 may be commissioned until a scheme for the provision of steam or hot water pass-outs has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted under sub-paragraph (1) must as a minimum comply with the conditions relating to steam and hot water pass-outs within any environmental permit granted in respect of the authorised development.

(3) No part of Work No. 1 may be commissioned until a scheme for the provision of reserve space, suitable for the future provision of water pressurisation, heating and pumping systems for potential off-site users of process or space heating and the later connection of Work No. 1 to such systems, has been submitted to and approved by the relevant planning authority.

(4) The scheme submitted under sub-paragraph (3) must demonstrate that the reserve space is suitable to accommodate the future installation of a pipeline connection of at least 400 millimetres in diameter.

(5) The schemes approved under sub-paragraphs (1) and (3) must be implemented as approved prior to the coming into operation of the authorised development and maintained throughout the operation of the authorised development.

(6) Prior to the installation of any steam or hot water pipeline in the reserve space identified within the scheme approved under sub-paragraph (3), details of the diameter and specification of the pipelines and a timetable for their installation must be submitted to and approved by the relevant planning authority and which must demonstrate that the diameter and specification of the pipelines are suitable for the connection of Work No. 1 to the identified off site users of process or space heating.

(7) The details approved under sub-paragraph (6) must be implemented as approved and maintained, unless otherwise agreed by the relevant planning authority.

### **Anticipatory steps towards compliance with any requirement**

**36.**—(1) If before this Order comes into force the undertaker or any other person takes any steps intended to be steps towards compliance with any provision of this Schedule, those steps must be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

(2) Any document submitted to the relevant planning authority which the undertaker considers may constitute a step referred to at sub-paragraph (1) must include a statement that it is likely to engage sub-paragraph (1).

### **Heavy goods vehicle prohibition**

**37.** The plans submitted pursuant to requirements 16, 24 and 33 must not provide for the use of South Marsh Road (west of Hobson Way, also known as South Marsh Lane Bridleway) by heavy goods vehicles accessing to or egressing from the authorised development.

### **Development consent obligation**

**38.**—(1) Construction of Work No. 1 must not start until a development consent obligation pursuant to section 106 of the 1990 Act has been secured between the relevant planning authority, the undertaker, EP SHB Limited, and Lloyds Bank plc (or any successor in title to the charge).



(2) The development consent obligation required by sub-paragraph (1) must reflect the obligations as secured by the section 106 agreement.

(3) Lloyds Bank plc (or any successor in title to the charge) is not required to enter into the development consent obligation required by sub-paragraph (1) where the charge has been discharged and no longer applies to any land within the Order limits and evidence of this has been provided to the satisfaction of the relevant planning authority.

## SCHEDULE 3

Article 5

## DEEMED APPROVAL OF MATTERS REFERRED TO IN REQUIREMENTS

<i>SHBEC planning permission condition number and topic</i>	<i>Requirement number and topic</i>
4. Details of final positioning of buildings, elevations and floor levels	5. Detailed design (position and scale)
5. Details of all external materials	6. Detailed design (appearance)
6. Existing tree planting to be retained	7. Retained trees
7. So far as relating to details and position of boundary treatments, circulation areas and other hard landscaping	8. Means of enclosure and hard landscaping
7. So far as relating to details of permanent lighting	9. Lighting scheme
7. So far as relating to a scheme for soft landscaping and planting	10. Soft landscaping
8. So far as relating to biodiversity protection	11. Biodiversity protection
9. So far as relating to surface water drainage	13. Surface water drainage
9. So far as relating to foul water drainage	14. Foul water drainage
10. So far as relating to construction traffic management and travel planning	16. Construction traffic management and travel planning
11. Details of type of piling to be used	17. Piling
12. Steps where unexpected contamination is found after development has commenced	18. Temporary halting of development on finding unexpected contamination
13. Scheme for investigation of contamination and report on findings of the investigation	19. Investigation and remediation of contamination
14. Remediation scheme under condition 13 to be carried out	20. Implementation of remediation scheme
15. Previously unidentified contamination	21. Procedure in cases of unexpected contamination
17. Flood warning and evacuation plan	23. Flood warning and evacuation plan
18. Delivery and servicing plan	24. Delivery and servicing plan
19. Operational travel plan	25. Operational travel plan

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<i>SHBEC planning permission condition number and topic</i>	<i>Requirement number and topic</i>
20. Details and implementation of visibility splays at site entrance	26. Visibility splays
21. So far as relating to plans for layout and construction of new entrance and highway drainage	27. New highway access
21. So far as relating to plans for parking	28. Parking
22. Road condition survey of South Marsh Road and subsequent report on traffic survey results	29. Road condition survey
23. Information to be provided to local planning authority to notify UK DVOF & Powerlines at the Defence Geographic Centre	30. Air safety
24. Use only of refuse derived fuels	31. Fuel type
25. No fuel to be stored outside of main building	32. Fuel storage
26. Decommissioning plan	33. Decommissioning

#### SCHEDULE 4

Article 10

#### STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to street works</i>	<i>(3)</i> <i>Description of street works</i>
In the Borough of North East Lincolnshire	South Marsh Road	Construction of a new permanent access and ancillary works in the area shown cross hatched blue and red and marked A on the access and rights of way plan
In the Borough of North East Lincolnshire	South Marsh Road	Works to existing access in the area shown cross hatched blue and marked B on the access and rights of way plan
In the Borough of North East Lincolnshire	South Marsh Road	Utility connection works in the area shown cross hatched blue and red and marked A on the access and rights of way plan

SCHEDULE 5

Article 11

STREETS SUBJECT TO PERMANENT ALTERATION OF LAYOUT

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Streets subject to alteration of layout</i>	<i>Description of alteration</i>
In the Borough of North East Lincolnshire	South Marsh Road	Construction of a new permanent access and ancillary works in the area shown cross hatched blue and red and marked A on the access and rights of way plan

SCHEDULE 6

Article 12

ACCESS

PART 1

THOSE PARTS OF THE ACCESS TO BE MAINTAINED AT THE PUBLIC EXPENSE

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street</i>	<i>Description of relevant part of access</i>
In the Borough of North East Lincolnshire	South Marsh Road	A new permanent access and ancillary works in the area shown cross hatched red and marked A on the access and rights of way plan

PART 2

THOSE PARTS OF THE ACCESS TO BE MAINTAINED BY THE STREET AUTHORITY

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street</i>	<i>Description of relevant part of access</i>
In the Borough of North East Lincolnshire	South Marsh Road	A new permanent access and ancillary works in the area shown cross hatched blue and marked A on the access and rights of way plan

**Status:** This is the original version (as it was originally made).

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street</i>	<i>Description of relevant part of access</i>
In the Borough of North East Lincolnshire	South Marsh Road	Existing access in the area shown cross hatched blue and marked B on the access and rights of way plan

## SCHEDULE 7

Article 13

## STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street</i>	<i>Description of extent of temporary stopping up</i>
In the Borough of North East Lincolnshire	South Marsh Road	Construction of a new permanent access and ancillary works in the area shown cross hatched red and marked A on the access and rights of way plan

## SCHEDULE 8

Article 18

## PROTECTIVE PROVISIONS

## PART 1

## FOR THE PROTECTION OF ANGLIAN WATER

1. For the protection of Anglian Water, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

2. In this Part of this Schedule—

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

“apparatus” means—

- (a) any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under the Water Industry Act 1991<sup>(23)</sup>; and
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of the Water Industry Act 1991<sup>(24)</sup> (adoption of sewers and disposal

<sup>(23)</sup> 1991 c. 56.

<sup>(24)</sup> Section 102(4) was amended by sections 90 and 96 of, and paragraphs 2 and 90 of Schedule 7 to, the Water Act 2003 (c. 37).

works) or an agreement to adopt made under section 104 of that Act(25) (agreements to adopt sewer, drain or sewage disposal works, at a future date),

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of the Water Industry Act 1991(26) (general interpretation)) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“plan” includes sections, drawings, specifications and method statements.

**3.** The undertaker must not interfere with, build over or near to, any apparatus within the Order limits or 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 the standard protection strips which are the strips of land falling the following distances to either side of the medial line of any apparatus—

- (a) 2.25 metres where the diameter of the pipe is less than 150 millimetres;
- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres;
- (c) 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres; and
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres,

unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision must be brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker in writing.

**4.** The alteration, extension, removal or re-location of any apparatus must not be implemented until—

- (a) any requirement for a permit under the Environmental Permitting (England and Wales) Regulations 2016(27) or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

**5.** Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order limits, the undertaker must, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed.

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(25) Section 104 was amended by sections 11(1) and (2), 56, 96(4) and 101(2) of, and paragraphs 2 and 91 of Schedule 7 and Part 3 of Schedule 9 to, the Water Act 2003 and by section 42(3) of the Flood Management Act 2010 (c. 29).

(26) There are amendments not relevant to this Order.

(27) S.I. 2016/1154.

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6. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

7. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets must immediately be given to Anglian Water and afforded the same protection as other Anglian Water assets.

8. If for any reason as a result of the construction of any of the works referred to in paragraphs 4, 5 and 7 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 Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other direct expenses, loss, damages, penalty or costs incurred by Anglian Water.

9. To the extent (but not greater) that Anglian Water has not used its reasonable endeavours to mitigate and minimise in whole or in part any costs, expenses, loss, demands, and penalties to which the provisions of this Part apply, that amount of such costs, expenses, loss, demands and penalties are not recoverable from the undertaker.

## PART 2

### FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER

#### Application

10. For the protection of National Grid the following provisions in this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and National Grid.

#### Interpretation

11. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity undertaking, an electric line or electrical plant, as defined in the Electricity Act 1989(28), belonging to or maintained by that electricity undertaker; and
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply,

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(28) 1989 c. 29, as amended by section 108 of, and paragraphs 24 and 38(1) and (3) of Schedule 6 to, the Utilities Act 2000 (c. 27) and regulation 48 of S.I. 2011/2704. There are other amendments not relevant to this Order.

together with any replacement apparatus and such other apparatus constructed under the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, will require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

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

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

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) are or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 14(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 14(2) or otherwise; or
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties”).

**Apparatus of Undertakers in stopped up streets**

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

**Acquisition of apparatus**

13.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not acquire apparatus or override any easement and/or other interest of National Grid otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affects the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such a deed of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it is the responsibility of the undertaker to procure or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

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

(4) Any agreement or consent granted by National Grid under paragraph 17 or any other paragraph of this Part of this Schedule, are not to be taken to constitute agreement under sub-paragraph (1).

**Removal of apparatus**

14.—(1) If, in the exercise of the agreement reached in accordance with paragraph 13(1) 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 of this Schedule and any right of an 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 National Grid in question in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 15(1)) the necessary facilities and rights—



(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for 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 or land secured by 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, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid 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 of this Schedule.

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

**15.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection 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 National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph 15(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 National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject then the matter must be referred to arbitration in accordance with paragraph 23 (arbitration) of this Part of this Schedule and the arbitrator may make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### **Retained apparatus: protection Gas Undertakers**

**16.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;

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- (d) the position of all apparatus;
  - (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
  - (f) any intended maintenance regimes.
- (3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.
- (4) Any approval of National Grid required under sub-paragraph (2)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
  - (b) must not be unreasonably withheld.
- (5) In relation to any work to which sub-paragraphs (1) and (2) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus 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 to which this paragraph applies must only be executed in accordance with the plan approved under sub-paragraph (3) and as relevant sub-paragraph (4) as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid must be entitled to watch and inspect the execution of those works.
- (7) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved under this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised works (or any relevant part of the authorised works) for which protective works are required and National Grid must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).
- (8) If National Grid in accordance with sub-paragraphs (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 10 to 12 and 14 to 16 apply as if the removal of the apparatus had been required by the undertaker under paragraph 15(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 the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will 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 section 52 of the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—
- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
  - (b) comply with sub-paragraph (11) at all times.
- (11) At all times when carrying out any works authorised under the Order the undertaker must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 18.

### **Retained apparatus: Protection: Electricity Undertakers**

17.—(1) Not less than 56 days before the commencement of any authorised works that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 15(2) or otherwise, the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within—

- (a) 15 metres measured in any direction of any apparatus; or
- (b) involve embankment works within 15 metres of any apparatus,

the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (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, positioning of plant;
- (f) the position of all apparatus;
- (g) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (h) any intended maintenance regimes; and
- (i) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within ten metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

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

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(5) Any approval of National Grid required under sub-paragraph (4)—

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

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

(7) Works to which this paragraph applies must only be executed in accordance with the plan approved under sub-paragraph (1) and as relevant sub-paragraph (5) as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid is entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be constructed by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved under this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised works (or any relevant part of the authorised works) for which protective works are required and National Grid must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 10 to 12 and 14 to 16 apply as if the removal of the apparatus had been required by the undertaker under paragraph 15(2).

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

(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in section 52 of the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) At all times when constructing any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

## **Expenses**

**18.—**(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid:
    - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 14(3); or
    - (ii) exercising any powers in the Order transferred to or benefitting National Grid;
  - (b) in connection with the cost of the constructing 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 construction of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
  - (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.
- (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 of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.
- (3) If in accordance with the provisions of this Part of this Schedule—
- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
  - (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was 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 29 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and 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 would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) will, 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 National Grid 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**

**19.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works 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 constructing such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these 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 the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker must—

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

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision does not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to construct the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised works or any other works authorised by this Part of this Schedule constructed by National Grid or an assignee, transferee or lessee of National Grid with the benefit of the Order under section 156 of the Planning Act 2008 (benefit of order granting development consent) or article 9 (consent to transfer benefit of the order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be constructed and not falling within this paragraph 19(3)(b) are to be subject to the full terms of this Part of this Schedule including this paragraph 19.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and without the consent of the undertaker.

(5) National Grid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph 19 applies where it is within National Grid’s reasonable gift and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid’s control.

**Enactments and agreements**

**20.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker

and National Grid 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**

**21.**—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 14(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 17, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) Whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by National Grid or the taking of action by National Grid, it must not be unreasonably withheld or delayed.

### **Access**

**22.** If in consequence of the agreement reached in accordance with paragraph 14(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**23.** Save for differences or disputes arising under paragraphs 14(2), 14(4), 15(1), 16 and 18(5), any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 29 (arbitration).

### **Notices**

**24.** The plans submitted to National Grid by the undertaker under paragraph 17(1) must be sent to National Grid Plant Protection at [plantprotection@nationalgrid.com](mailto:plantprotection@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## **PART 3**

### **FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS**

**25.** For the protection of the utility undertakers referred to in this Part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

**26.** In this Part—

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

“apparatus” means—

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- (a) in the case of a utility undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989<sup>(29)</sup>), belonging to or maintained by that utility undertaker;
- (b) in the case of a utility undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a utility undertaker within paragraph (c) of the definition of that term—
  - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
  - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991<sup>(30)</sup> (agreements to adopt water main or service pipe at future date);
- (d) in the case of a utility undertaker within paragraph (d) of the definition of that term—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; 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<sup>(31)</sup> (adoption of sewers and disposal works) or an agreement to adopt made under section 104 of that Act<sup>(32)</sup> (agreements to adopt sewer, drain or sewage disposal works, at future date), and includes a disposal main (within the meaning of section 219 of that Act (general interpretation)), a sludge main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989 (electricity supply);
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986<sup>(33)</sup> (gas supply);
- (c) water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 2 of the Water Industry Act 1991, for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

**27.** This Part does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act (street works in England and Wales).

**28.** Regardless of the temporary stopping up of streets and public rights of way under the powers conferred by article 13 (temporary stopping up of streets and public rights of way), a utility

<sup>(29)</sup> See section 64; there are amendments not relevant to this Order.

<sup>(30)</sup> Section 51A was inserted by section 92(1) of the Water Act 2003 (c. 37); section 51A was amended by section 10(1) and (2) of the Water Act 2014 (c. 21).

<sup>(31)</sup> Section 102(4) of the Water Industry Act 1991 was amended by section 56 of, and paragraphs 2 ad 90 to, the Water Act 2014.

<sup>(32)</sup> Section 104 was amended by section 96(4) of the Water Act 2003. There are other amendments not relevant to this Order.

<sup>(33)</sup> 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and was further amended by section 76 of the Utilities Act 2000 (c. 27) and section 197(9) of, and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20).



undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

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

**30.—(1)** If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of constructing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for 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 utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours 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 of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 29 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 29 (arbitration), and after the grant to the utility 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 of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility 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 in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

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

**31.—**(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility 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 utility undertaker in question or in default of agreement settled by arbitration in accordance with article 29 (arbitration).

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

**32.—**(1) Not less than 28 days before starting the construction of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 30(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

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

(3) Any requirements made by a utility 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 utility undertaker in accordance with sub-paragraph (1) 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 25 to 31 apply as if the removal of the apparatus had been required by the undertaker under paragraph 30(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 having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility 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.

**33.—**(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 30(2).

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 29 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 30(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

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

**34.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 30(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 utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility 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 utility undertaker, its officers, servants, contractors or agents, and nor does sub-paragraph (1) impose any liability on the undertaker in respect of consequential losses.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to 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.

**35.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 4

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

**36.**—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part—

“the 2003 Act” means the Communications Act 2003(**34**);

“electronic communications apparatus” has the same meaning as set out in paragraph 5 of the electronic communications code;

“the electronic communications code” has the same meaning as set out in sections 106 (application of the electronic communications code) to 119 (power to give assistance in relation to certain proceedings) and Schedule 3A(**35**) (the electronics communication code) of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 of that code;

“network” means—

(a) so much of a network or infrastructure system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106(5) of the 2003 Act; and

(b) a network which the Secretary of State is providing or proposing to provide; and

“operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act and who is an operator of a network.

**37.** The exercise of the powers of article 19 (statutory undertakers) is subject to Part 10 of Schedule 3A of the 2003 Act.

**38.**—(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 cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, 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 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 of the claim or demand is to 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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(34) 2003 c. 21.

(35) Schedule 3A was inserted by section 4(2) of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 29 (arbitration).

**39.** This Part of this Schedule does not apply to—

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

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

## PART 5

### FOR THE PROTECTION OF NETWORK RAIL

**41.** For the protection of Network Rail as defined in this part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Network Rail.

**42.** In this part of this Schedule—

“Network Rail” means Network Rail Infrastructure Limited (Company registration number 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN and any associated company of Network Rail 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 (meaning of “subsidiary” etc.) of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993(36)) 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 or a tenant or licensee of Network Rail for or connected with the purposes of such railway or works, apparatus or equipment; and

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

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

(2) Subject to sub-paragraph (1) where Network Rail is asked to give its consent, agreement or approval pursuant to this Part, such consent, agreement or approval must not be unreasonably withheld but may be given subject to reasonable conditions.

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(36) 1993 c. 43. Section 83(1) was amended by section 230(6) of the Transport Act 2000 (c. 38).

*Status: This is the original version (as it was originally made).*

**44.—(1)** The undertaker must not submit the construction traffic management plan to the relevant planning authority in accordance with requirement 16 of Schedule 2 (Construction traffic management and travel planning) without having first consulted with Network Rail.

(2) The undertaker must provide Network Rail with a draft of the construction traffic management plan and Network Rail must within a period of 28 days beginning with the date on which the draft construction traffic management plan is received by Network Rail serve written notice on the undertaker confirming—

- (a) any comments on the draft construction traffic management plan; or
- (b) any reasonable amendments to the draft construction traffic management plan as requested by Network Rail; or
- (c) that further information is required in order for Network Rail to make comments and/or reasonable amendments (in which case sub-paragraph 44(2) will apply to such further information from the date of its receipt by Network Rail).

(3) In the event that Network Rail fails to serve written notice in accordance with sub-paragraph 44(2) within 28 days of receipt no further consultation with Network Rail is required.

(4) The undertaker must include any reasonable amendments which are requested by Network Rail and notified to the undertaker by Network Rail in the notice given pursuant to sub-paragraph 44(2)(b) in the draft construction traffic management plan it submits to the relevant planning authorities in accordance with requirement 16 of Schedule 2 (Construction traffic management and travel planning) and the undertaker must not submit any such written details to the relevant planning authorities or finalise a construction traffic management plan which Network Rail has not been consulted on in accordance with sub-paragraph 44(2) or 44(3).

(5) Each notice and all other information required to be sent to Network Rail under the terms of this paragraph must—

- (a) be sent to the Company Secretary and General Counsel at Network Rail Infrastructure Limited, 1 Eversholt Street, London, NW1 2DN via Royal Mail plc's special delivery service (or if this service is no longer being provided an appropriate recorded delivery postal service) and marked for the attention of the London North Western Route Level Crossing Manager; and
- (b) contain a clear statement on its front page that the matter is urgent and Network Rail must respond within 28 days of receipt.

(6) In the event that any subsequent changes are made to the construction traffic management plan following consultation with Network Rail, in so far as such changes impact on railway property, the undertaker must not submit any written details to the relevant planning authorities or finalise any updates to the construction traffic management plan without further consultation with Network Rail.

**45.—(1)** The undertaker must not submit the delivery and servicing plan to the relevant planning authorities in accordance with requirement 24 of Schedule 2 (Delivery and servicing plan) without having first consulted with Network Rail.

(2) The undertaker must provide Network Rail with a draft of the delivery and servicing plan and Network Rail will within a period of 28 days beginning with the date on which the draft delivery and servicing plan is received by Network Rail serve written notice on the undertaker confirming—

- (a) any comments on the draft delivery and servicing plan; or
- (b) any reasonable amendments to the draft delivery and servicing plan as requested by Network Rail; or
- (c) that further information is required in order for Network Rail to make comments and/or reasonable amendments (in which case this sub-paragraph 45(2) will apply to such further information from the date of its receipt by Network Rail).

(3) In the event that Network Rail fails to serve written notice in accordance with subparagraph 45(2) within 28 days of receipt no further consultation with Network Rail is required.

(4) The undertaker must include any reasonable amendments which are requested by Network Rail and notified to the undertaker by Network Rail in the notice given pursuant to subparagraph 45(2)(b) in the draft delivery and servicing plan it submits to the relevant planning authorities in accordance with requirement 24 of Schedule 2 (Delivery and servicing plan) and the undertaker must not submit any such written details to the relevant planning authorities or finalise a delivery and servicing plan which Network Rail has not been consulted on in accordance with subparagraph 45(2) or 45(3).

(5) Each notice and all other information required to be sent to Network Rail under the terms of this paragraph must—

- (a) be sent to the Company Secretary and General Counsel at Network Rail Infrastructure Limited, 1 Eversholt Street, London, NW1 2DN via Royal Mail plc's special delivery service (or if this service is no longer being provided an appropriate recorded delivery postal service) and marked for the attention of the London North Western Route Level Crossing Manager; and
- (b) contain a clear statement on its front page that the matter is urgent and Network Rail must respond within 28 days of receipt.

(6) In the event that any subsequent changes are made to the delivery and servicing plan following consultation with Network Rail, in so far as such changes impact on railway property, the undertaker must not submit any such written details to the relevant planning authorities or finalise any updates to the delivery and servicing plan without further consultation with Network Rail.

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

- (a) in respect of the consultation with the engineer on the construction traffic management plan and the delivery and servicing plan submitted by the undertaker;
- (b) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it is 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 access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;
- (c) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (d) in respect of any additional temporary lighting of railway property, being lighting made reasonably necessary by reason or in consequence of damage to railway property as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others.

**47.—(1)** The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule 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; or

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- (c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development; or
- (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

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

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

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

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

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

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to 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.

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

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## EXPLANATORY NOTE

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

This Order authorises EP Waste Management Limited (referred to in this Order as the undertaker) to construct, operate and maintain an energy from waste electricity generating station located on land at the South Humber Bank Power Station Site, South Marsh Road, near Stallingborough, Lincolnshire,



fuelled by refuse derived fuels, with a capacity to process 753,500 tonnes of refuse derived fuel per annum, with a gross generation capacity of up to 95 megawatts at ISO conditions.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 25 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at New Oxford House, George Street, Grimsby, North East Lincolnshire DN31 1HB.