
STATUTORY INSTRUMENTS

2022 No. 853

The Sizewell C (Nuclear Generating Station) Order 2022

PART 1

GENERAL PROVISIONS

Preliminary

Citation and commencement

1. This Order may be cited as the Sizewell C (Nuclear Generating Station) Order 2022 and comes into force on 11th August 2022.

Interpretation

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

“the 1847 Act” means the Harbours, Docks, and Piers Clauses Act 1847**(1)**;

“the 1961 Act” means the Land Compensation Act 1961**(2)**;

“the 1965 Act” means the Compulsory Purchase Act 1965**(3)**;

“the 1980 Act” means the Highways Act 1980**(4)**;

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981**(5)**;

“the 1984 Act” means the Road Traffic Regulation Act 1984**(6)**;

“the 1990 Act” means the Town and Country Planning Act 1990**(7)**;

“the 1991 Act” means the New Roads and Street Works Act 1991**(8)**;

“the 2008 Act” means the Planning Act 2008**(9)**;

“the 2009 Act” means the Marine and Coastal Access Act 2009**(10)**;

“the 2015 Order” means the Town and Country Planning (General Permitted Development) (England) Order 2015**(11)**;

“3G Pitch” means third generation artificial grass pitches that are specifically designed to meet the needs of football and rugby by more closely replicating the playing characteristics of natural turf than historic artificial grass pitches;

(1) 1847 c. 27.

(2) 1961 c. 33.

(3) 1965 c. 56.

(4) 1980 c. 66.

(5) 1981 c. 66.

(6) 1984 c. 27.

(7) 1990 c. 8.

(8) 1991 c. 22.

(9) 2008 c. 29.

(10) 2009 c. 23.

(11) S.I. 2015/596.

- “address” includes any number or address used for the purposes of electronic transmission;
- “ancillary structures” means the Works specified in requirement 22 in Schedule 2 (Requirements);
- “apparatus” unless otherwise provided for, has the same meaning as in Part 3 of the 1991 Act;
- “approved plans” means the drawings certified as such by the Secretary of State under article 82 (certification of plans, etc) and identified in Schedule 7 of this Order or approved pursuant to a requirement;
- “area of seaward construction activity” means the area of the sea within the Order limits shown on the Works Plans;
- “associated development design principles” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);
- “authorised development” means the development and associated development described in Schedule 1 (Authorised development) and any other development authorised by this Order which is development within the meaning of section 32 of the 2008 Act;
- “book of reference” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);
- “bridleway” has the same meaning as in the 1980 Act;
- “building” includes any structure or erection or any part of a building, structure or erection;
- “capital dredging works” mean works which comprise the excavation of the seabed, in an area or down to a level (relative to Ordnance Datum) not previously dredged during the preceding 10 years;
- “carriageway” has the same meaning as in the 1980 Act;
- “code of construction practice” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);
- “commence” means to carry out any material operation, as defined in section 155 of the 2008 Act (when development begins), forming part, or carried out for the purposes, of the authorised development other than operations consisting of—
- (a) site preparation, ecological mitigation and clearance works;
 - (b) pre-construction archaeological works;
 - (c) environmental surveys and monitoring;
 - (d) removal of hedgerows, trees and shrubs;
 - (e) investigations for the purpose of assessing ground conditions;
 - (f) diversion or laying of services;
 - (g) remedial work in respect of any contamination or adverse ground conditions (excluding works including and associated with dewatering activities carried out as part of Work No. 1A(k) (SSSI crossing), Work No. 1A(s) (realignment of Sizewell Drain and associated works) and Work No. 1A(t) (perimeter below-ground cut-off wall, including associated de-watering of contained area) in Schedule 1);
 - (h) receipt and erection of construction plant and equipment;
 - (i) the temporary display of site notices and advertisements;
 - (j) erection of temporary buildings and structures (which for the purpose of this definition does not include Work No. 9(a) (northern park and ride), Work No. 10(a) (southern park and ride) or Work No. 13(a) (freight management facility);
 - (k) Work No. 1A(cc) (flood mitigation area and associated habitat);

- (l) Work No. 1A(ee) (bat barn);
 - (m) Work No. 6 (Fen meadow habitat, Halesworth);
 - (n) Work No. 7 (Fen meadow habitat, Benhall); and
 - (o) Work No.18 (Fen meadow habitat Pakenham);
- and the words “commencement” and “commenced” are to be construed accordingly;
- “compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act (notice of authorisation of compulsory acquisition);
- “construction method statement” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);
- “cycle track” has the same meaning as in the 1980 Act;
- “cycleway” means a way constituting or comprised in a highway, being a way over which the public have the following, but no other, rights of way, that is to say, a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988) with a right of way on foot and a right of way on horseback or leading a horse;
- “deemed marine licence” means the marine licence granted by this Order as set out in Schedule 21;
- “development” means the carrying out of a material operation, as defined in section 155 of the Planning Act 2008 excluding any operation excluded from the definition of “commencement”;
- “discharging authority” means the body responsible for giving any endorsement, agreement or approval required by a requirement;
- “Deed of Obligation” means (i) the agreement between (1) East Suffolk Council (2) Suffolk County Council and (3) NNB Generation Company (SZC) Limited dated 8 October 2021 as varied by two agreements between the same parties dated 13 April 2022 and 6 May 2022, respectively, certified as such by the Secretary of State under article 82 (certification of plans, etc); and including (ii) any deeds of covenant or other agreements entered into pursuant to Clause 14 of the deed of obligation from time to time, and the deed of covenant made between the NNB Generation Company (SZC) Limited and the Environment Agency on 8 October 2021 under section 37 of the Environment Act 1995 and section 30 of the Anglian Water Authority Act 1977; and (iii) any modifications made by the Secretary of State to (i) and (ii) under article 11 (modification and discharge of deed of obligation) from time to time;
- “drainage strategy” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);
- “draft coastal processes monitoring and mitigation plan” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);
- “draft fen meadow plan” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);
- “draft fish impingement and entrainment monitoring plan” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);
- “draft marine mammal mitigation protocol” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);
- “draft rail noise mitigation plan” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);
- “draft *sabellaria* reef management and monitoring plan” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);
- “draft site integrity plan” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);

“draft water monitoring and management plan” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);

“draft wet woodland plan” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);

“EDF Energy Nuclear Generation Limited” means EDF Energy Nuclear Generation Limited (Company number 03076445), being the holder of a nuclear licence under section 3 of the Nuclear Installations Act 1965;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“environmental information” means the Environmental Statement and any information constituting “environmental information” as defined by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 relied upon by the Secretary of State in reaching a reasoned conclusion on the significant effects of the authorised development on the environment pursuant to regulation 21(1)(b) of those regulations;

“environmental statement” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);

“estate” means the area shown on Figure 2 of the estate wide management plan;

“estate wide management plan” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);

“fen meadow strategy” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);

“footway” and “footpath” have the same meanings as in the 1980 Act;

“general direction” means a direction given by the undertaker under article 65 (power to make general directions to vessels);

“grid works” means Work No. 1A(o), (p) and (r) or any “other associated development” as set out in Schedule 1 which is necessary to facilitate the carrying out of these works;

“harbour” means the harbour as comprised within the harbour limits and to be constructed by the undertaker in pursuance of the powers conferred on it by this Order, and all other works, land, buildings, ancillary works, plant, property and conveniences connected with it, as from time to time existing within the harbour limits;

“harbour authority”, in relation to a harbour, means the harbour authority that has a statutory duty to manage, maintain or improve the harbour;

“harbour limits” means the limits of the harbour as specified in article 54 (limits of harbour) and identified in Schedule 20 (limits of harbour);

“harbour master” means the person appointed as such by the undertaker and includes that person’s deputies and assistants and any other person for the time being authorised by the undertaker to act, either generally or for a specific purpose, in the capacity of harbour master;

“the harbour undertaking” means the harbour undertaking of the undertaker as authorised from time to time;

“highway”, “highway authority” and “local highway authority” have the same meanings as in the 1980 Act;

“land” includes land covered by water, any interest in land or right in, to or over land;

“land plans” means the plans certified as such by the Secretary of State under article 82 (certification of plans, etc) and identified in Schedule 3 (Land Plans);

“landscape restoration area” means the main development site excluding the area of the permanent development site;

“lead local flood authority” means the body designated as such, for the area in which the authorised development is located, pursuant to section 6(7) (other definitions) of the Flood and Water Management Act 2010;

“level of high water” means the level of mean high water springs;

“level of low water” means the level of mean low water neaps;

“lighting management plan” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);

“local planning authority” has the meaning given in the 1990 Act;

“main development site” means the land within which Work No. 1 may be constructed as shown on the Works Plans;

“main development site design and access statement” means the document certified as such by the Secretary of State as such under article 82 (Certification of plans, etc);

“main development site operational siting and height parameters” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);

“main development site water monitoring and response strategy” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);

“maintain” includes inspect, repair, adjust, alter, refurbish, clear, remove or reconstruct, replace and improve, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental information, and any derivative of “maintain” is to be construed accordingly;

“main platform works” means Work No 1A(a) to (h);

“marine works” means Work Nos. 1A(l) (permanent beach landing facility), 1A(aa) (temporary marine bulk import facility), 1A(m) (soft coastal defence feature), 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H, 2I, 2J, 2K, 2L, 2M, 2N, 2O and 2P (cooling water infrastructure, drainage outfall, desalination intake and outfall infrastructure) described in Schedule 1 and any other works below mean high water springs authorised by this Order or, as the case may require, any part of those works and “marine work” refers to any one of the marine works;

“Maritime and Coastguard Agency” means the executive agency of the Department for Transport;

“master” in relation to a vessel means any person for the time being having or taking the command, charge or management of the vessel;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“National Grid” means National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH, being a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“Natural England” means the organisation charged with advising the Secretary of State on nature conservation matters in England;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) 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;

“new Sizewell B relocated facilities permission” means any planning permission granted under the 1990 Act prior to service of notice under article 5 (effect of the Order on the Sizewell B relocated facilities permissions) in respect of the works comprised in Work No. 1D or Work No. 1E, or any part of them;

“on-site marsh harrier compensatory habitat strategy” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);

“operational period” means the period of time that the relevant part of the authorised development is in operation after construction and commissioning is complete pursuant to the relevant construction contract or contracts and “operation” and “operational” should be construed accordingly;

“order land” means the land identified by plot numbers on the land plans and described in the book of reference;

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

“ordnance datum” means ordnance datum (Newlyn);

“other associated development” means works authorised by Part 2 of Schedule 1 of this Order;

“outline landscape and ecology management plan” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);

“outline vessel management plan” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);

“overarching archaeological written scheme of investigation” means the document certified by the Secretary of State as such under article 82 (certification of plans, etc);

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(12) (interpretation);

“parameter plans” means the plans certified as such by the Secretary of State under article 82 (certification of plans, etc) and identified in Schedule 6 (Parameter Plans);

“peat strategy” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);

“permanent development site” means the land within the permanent development site boundary as shown on plan SZC-SZC0100-xx-100-DRW-100089 (Main Development Site, Main Platform, Proposed General Arrangement (Operational));

“permanent limits” means the limits of land shown shaded pink, orange and blue on the land plans;

“public rights of way implementation plan” means a written plan submitted to and approved by Suffolk County Council under requirement 10;

“rights of way and access strategy” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);

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

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

“rail works” means Work No. 4, or any other associated development as set out in Schedule 1 which is necessary to facilitate the carrying out of these works;

(12) 1981. c. 67. The definition of “owner” in section 7 was amended by the Planning and Compensation Act 1991 (c. 34).

“requirement” means a requirement set out in Schedule 2 (requirements), and a reference to a numbered requirement is a reference to the requirement set out in the paragraph of the same number in that Schedule;

“rights of way and access strategy” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);

“rights of way plans” means the plans certified as such by the Secretary of State under article 82 and identified in Schedule 5 (rights of way plans);

“Sizewell B relocated facilities permission 1” means the planning permission granted by East Suffolk Council on 13 November 2019, with reference number DC/19/1637/FUL and any variations granted thereto pursuant to section 96A, section 73 or section 73A of the 1990 Act;

“Sizewell B relocated facilities permission 2” means the planning permission granted by East Suffolk Council on 18 February 2021, with reference number DC\20\4646\FUL and any variations granted thereto pursuant to section 96A, section 73 or section 73A of the 1990 Act;

“Sizewell B relocation works 2” means Work No. 1E and any other associated development related to such work or, as the case may require, any part of those works;

“Sizewell B relocation works 1” means Work No. 1D and any other associated development related to such work or, as the case may require, any part of those works;

“Sizewell link road landscape and ecology management plan” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);

“Sizewell Marshes SSSI” means the Sizewell Marshes Site of Special Scientific Interest;

“special direction” means a direction given by the harbour master under article 67 (power to make special directions to vessels);

“specific associated development works” means Work No. 4B, 4D, 9, 10 and 13;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act (statutory undertakers’ land) and includes a public communications provider as defined in section 151(1) of the Communications Act 2003(13);

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

“street authority”, in relation to a street, has the meaning given in Part 3 of the 1991 Act (the street authority and other relevant authorities);

“subsoil” means any stratum of land that is below the surface of the ground;

“SZC construction works” means the construction of Work Nos. 1A, 1B, 1C, and 1D or 1E (as the case may be) and any works authorised by Part 2 of Schedule 1 in connection with such works;

“terrestrial ecology monitoring and mitigation plan” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);

“terrestrial works” means all works located above mean high water springs authorised by this Order;

“traffic authority” has the meaning given to it in section 121A of the Road Traffic Regulation Act 1984;

“traffic sign” has the meaning given to the term in section 64(1) of the Road Traffic Regulation Act 1984;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“tree preservation order” has the meaning given in section 198 of the 1990 Act (power to make tree preservation orders);

“two village bypass landscape and ecology management plan” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);

“undertaker” means NNB Generation Company (SZC) Limited (company number 09284825) or any person who has the benefit of this Order in accordance with articles 8 (benefit of Order) and 9 (consent to transfer benefit of the Order);

“undertaking” mean the generation of electricity by the undertaker as authorised from time to time;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“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;

“westleton marsh harrier compensatory habitat strategy” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);

“wet woodland strategy” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc);

“Work” means a numbered work identified as part of the authorised development in Schedule 1 and includes any other associated development related to that work;

“Works plans” means the plans certified as such by the Secretary of State under article 82 (certification of plans, etc) and identified in Schedule 4 of this Order;

“working days” means Monday to Friday excluding bank holidays and other public holidays.

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

(3) Subject to article 4 (limits of deviation), all distances, directions and lengths referred to in this Order are approximate and distances between points on a Work comprised in the authorised development and shown on the Works plans or rights of way plans are to be taken to be measured along that Work.

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

(5) References to any statutory body includes that body’s successor in respect of functions which are relevant to this Order.

(6) Unless otherwise stated, references to East Suffolk Council refer to this body in its capacity as a local planning authority, and references to Suffolk County Council refer to this body in its capacity as a local highway authority.

(7) A reference in this Order to a Work designated by a number, or by a combination of letters and numbers (for example, “Work No. 4A”), is a reference to the Work so designated in Schedule 1 and reference to—

(a) Work No.1 means Work Nos. 1A, 1B, 1C, 1D, and 1E;

(b) Work No.2 means Work Nos. 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H, 2I, 2J, 2K 2L, 2M, 2N, 2O and 2P;

(c) Work No. 4 means Work Nos. 4A, 4B, 4C and 4D;

- (d) Work No. 11 means Work Nos. 11A, 11B and 11C;
 - (e) Work No. 12 means Work Nos. 12A, 12B, 12C and 12D;
 - (f) Work No. 14 means Work Nos. 14A and 14B;
- (8) A reference in the Schedules to a “relevant site” is a reference to the site of that name shown in the Works plans, rights of way plans and land plans.
- (9) References in the Schedules to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the rights of way plans or land plans.
- (10) In this Order, the expression “includes” or “include” is to be construed without limitation.
- (11) The definitions in paragraph (1) do not apply to Schedule 21 (deemed marine licence under Part 4 (Marine licensing) of the 2009 Act).
- (12) A reference in the Schedules to this Order to “highway (all traffic)” or “new highway (all traffic)” is a reference to a highway, other than a public right of way or a highway used only by non-motorised users.
- (13) A reference in the Schedules to this Order to “highway (NMUs)” is a reference to a highway over which only non-motorised users may pass but which is not a highway shown or required to be shown on the definitive map and statement (as defined in section 53 of the Wildlife and Countryside Act 1981).
- (14) A reference in the Schedules to this Order to “highway (footpath)” refers to any route used as a public right of way, including footpaths, cyclepaths, bridleways, byways and restricted byways, but reference to ‘footpath’ in column (3) of Schedule 11 refers to a public right of way on foot only.

PART 2

PRINCIPAL POWERS

Development consent etc granted by Order

3. Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development, to be carried out within the Order limits.

Limits of deviation

4.—(1) Subject to paragraph (2) in constructing Work No. 1, Work No. 2, Work No. 3, Work No. 4, Work No. 5, Work No. 6, Work No. 7, Work No. 9, Work No. 10, Work No. 13, Work No. 14, Work No. 15, Work No. 16, Work No. 17 and Work No. 18 the undertaker may not deviate vertically or laterally from the levels shown or noted on the Approved Plans except as approved pursuant to Schedule 2 (requirements).

(2) In constructing any ancillary structures, the undertaker may deviate vertically and laterally to the extent authorised by requirement 22.

(3) In constructing Work No. 11 and Work No. 12, the undertaker may deviate.

- (a) Vertically from the levels shown or noted on the Approved Plans to a maximum of 1 metre upwards or 1 metre downwards; and
- (b) laterally to the extent shown or noted on the Approved Plans or as otherwise approved pursuant to Schedule 2 (Requirements).

Effect of the Order on the Sizewell B relocated facilities permissions

5.—(1) If the undertaker serves a notice on East Suffolk Council that it intends to commence Work No. 1D or Work No. 1E—

- (a) the undertaker must cease to carry out development under the Sizewell B relocated facilities permission 1, Sizewell B relocated facilities permission 2 and any new Sizewell B relocated facilities permission; and
- (b) the conditions of the Sizewell B relocated facilities permission 1, Sizewell B relocated facilities permission 2 and any new Sizewell B relocated facilities permission will be unenforceable, except in respect of any breach that occurred prior to the undertaker serving notice under this paragraph.

(2) The undertaker must not carry out Work No. 1D or Work No. 1E under this Order until notice has been served under paragraph (1) but nothing in this Order shall prevent the undertaker from commencing Work No. 1E following commencement of Work No. 1D provided that notice is served on East Suffolk Council to that effect.

(3) Where the undertaker serves notice on East Suffolk Council that it is commencing Work No. 1E it shall not thereafter carry out Work No. 1D and, in the event that the undertaker has commenced Work No. 1D(d) or (e), the undertaker may not implement Work No. 1E(d).

(4) Notwithstanding paragraph (2), 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 (1).

(5) Without prejudice to the generality of paragraph (4), the undertaker may discharge any requirement in Schedule 2 of this Order at any time prior to or following the service of notice under paragraph (1).

(6) Where details, plans, works or any other matters have been approved or agreed by East Suffolk Council pursuant to a condition of the Sizewell B relocated facilities permission 1 in column (1) of Schedule 8 Part 1 (deemed approval of requirements relating to Sizewell B relocated facilities permission 1 and 2) prior to the date on which the undertaker serves notice under paragraph (1) the corresponding requirement to that condition in column (2) of Schedule 8 Part 1 (deemed approval of requirements relating to Sizewell B relocated facilities permission 1 and 2) will be deemed to have been approved insofar as it relates to Work No. 1D.

(7) Where details, plans works or any other matters have been approved or agreed by East Suffolk Council pursuant to a condition of the Sizewell B relocated facilities permission 2 in column (1) of Schedule 8 Part 2 (deemed approval of requirements relating to Sizewell B relocated facilities permission 1 and 2) prior to the date on which the undertaker serves notice under paragraph (1) the corresponding requirement to that condition in column (2) of Schedule 8 Part 2 (deemed approval of requirements relating to Sizewell B relocated facilities permission 1 and 2) will be deemed to have been approved insofar as it relates to Work No. 1E

(8) Where details, plans, (except for those plans which are also Approved Plans relating to Work No. 1D or Work No. 1E) works or any other matters have been imposed as a condition, or approved or agreed pursuant to a condition, of any new Sizewell B relocated facilities permission prior to the date on which the undertaker serves notice under paragraph (1), East Suffolk Council and the undertaker will agree in writing which details, documents, plans, works or other matters under the new Sizewell B relocated facilities permission will be deemed to have been discharged, approved, agreed, obtained or undertaken for the purposes of the requirement relating to Work No. 1D or Work No. 1E (as the case may be).

Maintenance of authorised development

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

Authorisation of use

7.—(1) The undertaker is authorised to operate and use the authorised development for which development consent is granted by this Order.

(2) Paragraph (1) does not relieve the undertaker of any duty to obtain any permit, licence or other obligation under any other legislation that may be required from time to time to authorise the operation of any part of the authorised development.

Benefit of Order

8.—(1) Subject to article 9 (consent to transfer benefit of the Order), the provisions of this Order have effect solely for the benefit of NNB Generation Company (SZC) Limited save for—

- (a) the Sizewell B relocation works 1 and the Sizewell B relocation works 2, for which the provisions of this Order have effect for the benefit of NNB Generation Company (SZC) Limited and EDF Energy Nuclear Generation Limited;
- (b) in respect of any rail works, for which the provisions of this Order have effect for the benefit of NNB Generation Company (SZC) Limited and Network Rail; and
- (c) in respect of any grid works, for which the provisions of this Order have effect for the benefit of NNB Generation Company (SZC) Limited and National Grid.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

(3) For the purpose of exercising the power to carry out operations under paragraph (2)(a) of article 10 (enforcement of the Deed of Obligation), East Suffolk Council and Suffolk County Council will be deemed to have the benefit of the Order.

Consent to transfer benefit of the Order

9.—(1) The undertaker may, with the written consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed between the undertaker and the lessee.

(2) The main platform works may not be operated or used except by a person with the benefit of the Order.

(3) The Secretary of State must consult the Marine Management Organisation, East Suffolk Council and Suffolk County Council before giving consent under paragraph (1).

(4) Where the undertaker seeks to transfer the benefit of some but not all of the Order powers, the Secretary of State shall take into account whether such partial transfer can take place without prejudicing—

- (a) delivery of the authorised development as a whole;

- (b) the ability of the person bound by the Deed of Obligation following such transfer to meet all obligations contained therein;
- (c) the ability of East Suffolk Council and Suffolk County Council to enforce the terms of the Deed of Obligation.

(5) Where a transfer or grant has been made in accordance with this article, references in this Order to the undertaker, except in paragraph (5), include references to the transferee or the lessee.

(6) Where the undertaker has transferred any benefit (“transferor”), or for the duration of any period during which the undertaker has granted any benefit (“grantor”), under paragraph (1) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant, is subject to the same restrictions, liabilities and obligations under this Order as would apply if those benefits or rights were exercised by the transferor or grantor.

(7) The obligations of the undertaker under the Deed of Obligation are enforceable in accordance with article 10 (Enforcement of the Deed of Obligation) against any person to whom the power to construct or operate the main platform work has been transferred or granted under this article for so long as that person benefits from the power to construct or operate any of those works, and such transferee or lessee shall be treated for all purposes as the undertaker who entered into the Deed of Obligation with the other parties to it.

(8) The obligations of parties to the Deed of Obligation other than the undertaker are enforceable by any person to whom the power to construct or operate the main platform works has been transferred or granted under this article for so long as that person benefits from the power to construct or operate any of those works, and such parties shall be treated for all purposes as parties who entered into the Deed of Obligation with the transferee or lessee.

Enforcement of the Deed of Obligation

10.—(1) The terms of the Deed of Obligation are enforceable by injunction.

(2) Without prejudice to paragraph (1), if there is a breach of a requirement in the Deed of Obligation to carry out any operations in, on, under or over the land to which the requirement relates, East Suffolk Council or Suffolk County Council may—

- (a) enter the land and carry out the operations, and
- (b) recover from the undertaker any expenses reasonably incurred by them in so doing.

(3) Before exercising their power under paragraph 2(a) East Suffolk Council or Suffolk County Council shall give not less than twenty-one days’ notice of their intention to do so to any owner or occupier of the land.

(4) Following receipt of the notice given in accordance with paragraph (3) in relation to land in its possession, the undertaker shall not refuse or hinder entry to such land by East Suffolk Council or Suffolk County Council provided that such entry is in accordance with any reasonable requirements of the undertaker.

(5) If entry to the land by East Suffolk Council or Suffolk County Council is refused or hindered by the undertaker, the owner or occupier, they may issue a warrant to—

- (a) the sheriff, or
- (b) the enforcement officer,

to allow entry to it by the person appointed in the warrant to receive it.

(6) On receipt of the warrant the person to whom it is issued shall allow entry to the land accordingly.

(7) If, by virtue of paragraph 3A of Schedule 7 to the Courts Act 2003, the warrant is issued to two or more persons collectively, the duty in paragraph 5 of Schedule 7 to the Courts Act 2003 shall

apply to the person to whom the warrant is allocated in accordance with the approved arrangements mentioned in that Schedule.

(8) The Deed of Obligation shall be a local land charge in respect of all freehold or leasehold interests in land owned by the undertaker within the Order limits and for the purposes of the Local Land Charges Act 1975 the authority by whom the obligation is enforceable shall be treated as the originating authority as respects such a charge.

(9) In this article—

“undertaker” means the undertaker authorised to construct or operate the main platform works, being the undertaker bound by the Deed of Obligation;

“the enforcement officer”, in relation to a warrant to under this article, means the officer or officers identified for that purpose in paragraph 3A of Schedule 7 to the Courts Act 2003; and

“sheriff” includes an under sheriff or other legally competent deputy, and means the sheriff for the area where the land is situated, or if land in one ownership is not situated wholly in one such area the sheriff for the area where any part of the land is situated.

Modification and discharge of Deed of Obligation

11.—(1) An obligation in the Deed of Obligation may not be modified or discharged except—

- (a) by agreement between the undertaker and the beneficiary of the obligation, executed as a deed; or
- (b) further to a determination by the Secretary of State under this article.

(2) The undertaker may, at any time after the expiry of the period of five years beginning with the date on which the Deed of Obligation was first entered into, apply to the Secretary of State for the obligation—

- (a) to have effect subject to such modifications as may be specified in the application; or
- (b) to be discharged,

and must notify East Suffolk Council, Suffolk County Council and the Environment Agency as soon as any such application is made.

(3) An application under paragraph (2), for the modification of an obligation in the Deed of Obligation may not specify a modification imposing an obligation on any other person against whom the Deed of Obligation is enforceable.

(4) Where an application is made to the Secretary of State under paragraph (2), the Secretary of State must consult East Suffolk Council, Suffolk County Council and the Environment Agency and, taking into account their responses, may determine—

- (a) that the obligation shall continue to have effect without modification;
- (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or
- (c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications,

and shall give notice of their determination to the applicant, East Suffolk Council, Suffolk County Council and the Environment Agency within three months of the application and provide full reasons for the decision.

(5) Where the Secretary of State determines under this article that an obligation shall have effect subject to modifications specified in the application, the obligation as modified shall be enforceable as if it had been entered into on the date on which notice of the determination was given to the applicant, East Suffolk Council, Suffolk County Council and the Environment Agency or such other date as the Secretary of State may determine.

(6) An application to the Secretary of State under paragraph (2) shall include the following information—

- (a) the name and address of the undertaker;
- (b) sufficient information to enable identification of the obligation which the undertaker wishes to have modified or discharged;
- (c) the undertaker’s reasons for applying for the modification or discharge of that obligation; and
- (d) such other information as the Secretary of State considers necessary to enable them to determine the application.

(7) When the Secretary of State receives an application for the modification or discharge of an obligation under paragraph (2) the undertaker shall arrange for the application to be publicised by—

- (a) posting notice of the application on or near the land to which the obligation relates for not less than 21 days; or
- (b) publishing notice of the application in a local newspaper circulating in the locality in which that land is situated and on the undertaker’s website.

(8) The notice referred to in paragraph (6) must include the name of the undertaker, details of the obligation that is proposed to be modified or discharged, an address or website where members of the public may inspect copies of the application, the address or email address to which any person who wishes to make a representations may write, and a date (no later than 21 days beginning on the date that the notice is posted or published) by which such representations should be made to the Secretary of State.

(9) Where it is proposed that East Suffolk Council, Suffolk County Council or the Environment Agency is not to be a party to any deed entered into under paragraph (1)(a), the body not proposed to be a party must be provided with the information set out in paragraphs (6)(a) to (c), and be given not less than 21 days to make representations.

(10) Section 84 of the Law of Property Act 1925 (power to discharge or modify restrictive covenants affecting land) does not apply to an obligation in the Deed of Obligation.

(11) In this article “undertaker” means the undertaker authorised to construct or operate the main platform works, being the undertaker bound by the Deed of Obligation.

Defence to proceedings in respect of statutory nuisance

12.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽¹⁴⁾ (Summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within sub-paragraphs (d), (fb), (g) or (ga) of section 79(1) of that Act (statutory nuisances and inspections thereof) no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction, maintenance or operation of the authorised development and that the nuisance is attributable to the carrying out or use of the authorised development in accordance with—
 - (i) a notice served under section 60 (control of noise on construction site);
 - (ii) a consent given under section 61 (prior consent for work on construction site); or
 - (iii) the controls and measures relating to noise, vibration, dust or lighting as described in the Construction Method Statement, Code of Construction Practice,

⁽¹⁴⁾ 1990 c. 43. Section 79(1)(fb) was inserted by section 102 of the Clean Neighbourhoods and Environment Act 2005 (c. 16). There are amendments to this Act which are not relevant to this Order.

Lighting Management Plan, Main Development Site Design and Access Statement, Associated Development Design Principles and Outline Landscape and Ecology Management Plan or in accordance with noise and lighting levels set out in an environmental permit relating to the construction, maintenance or operation of the authorised development; or

- (b) is a consequence of the construction, maintenance or operation of the authorised development and that it cannot, to the reasonable satisfaction of East Suffolk Council reasonably be avoided.

(2) Sections 61(9) of the Control of Pollution Act 1974⁽¹⁵⁾ (consent for work on construction sites) as it relates to proceedings under section 82 of the Environmental Protection Act 1990 (Summary proceedings by persons aggrieved by statutory nuisance) 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.

(3) In this article “premises” has the same meaning as in section 79 of the Environmental Protection Act 1990.

PART 3

STREETS

Power to alter layout, etc., of streets

13.—(1) The undertaker may, subject to paragraph (3), for the purposes of constructing, operating and maintaining the authorised development, enter onto and alter the layout of, or carry out any works on, any street whether or not within the Order limits and, without limiting the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, street, footpath, footway, cycle track or verge or central reservation;
- (b) make and maintain passing place(s);
- (c) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track, verge, or central reservation within the street;
- (d) reduce the width of the carriageway of the street;
- (e) execute any works to widen or alter the alignment of pavements;
- (f) execute any works of surfacing or re-surfacing of the street; and
- (g) execute any works necessary to alter existing facilities for the management and protection of pedestrians.

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

(3) The powers conferred by paragraph (1) must not be exercised without the consent of the street authority.

⁽¹⁵⁾ 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990 (c. 43), and paragraph 1 of Schedule 24 to the Environment Act 1995 c. 25. Section 61(2) was amended by section 133 of and Schedule 7 to the Building Act 1984 (c. 55). There are other amendments to the 1974 Act which are not relevant to the Order.

Street works

14.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in column (2) of Schedule 9 (Streets subject to street works) as is within the Order limits for the relevant site specified in column (1) of Schedule 9 and—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street or carry out works to strengthen or repair the carriageway;
- (c) place or keep apparatus in the street;
- (d) maintain, renew or alter apparatus in or on the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d).

(2) Without limiting the scope of the powers conferred by paragraph (1) but subject to the consent of the street authority, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development, enter on so much of any other street whether or not within the Order limits, for the purposes of carrying out the works set out at paragraph (1) above.

(3) The authority given by paragraph (1) or (2) 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.

(4) The provisions of sections 54 to 106 of the 1991 Act (unless disapplied through the operation of article 15 (application of the 1991 Act)) apply to any street works carried out under paragraph (1) or (2).

Application of the 1991 Act

15.—(1) Where the undertaker carries out works under this Order in relation to a highway which consists of or includes a carriageway and the works carried out are—

- (a) of a description mentioned in any of sub-paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of the 1991 Act (which defines what highway authority works are major highway works); or
- (b) works which, had they been executed by the highway authority, could have been carried out in exercise of the powers conferred by section 64 (dual carriageway and roundabouts) or section 184 (vehicle crossings over footways and verges) of the 1980 Act,

the works will be treated for the purposes of Part 3 of the 1991 Act (street works) as if they were major highway works and references in that Part to the highway authority concerned, in relation to such works, are to be construed as references to the undertaker.

(2) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers of this Order—

- (a) section 56 (power to give directions as to timing of street works);
- (b) section 56A (power to give directions as to placing of apparatus);
- (c) section 58 (restrictions on works following substantial road works);
- (d) section 58A (restriction on works following substantial street works);
- (e) section 73A (power to require undertaker to re-surface street);
- (f) section 73B (power to specify timing etc. of re-surfacing);
- (g) section 73C (materials, workmanship and standard of re-surfacing);
- (h) section 77 (liability for cost of use of alternative route);
- (i) section 78A (contributions to costs of re-surfacing by undertaker); and

(j) Schedule 3A (restriction on works following substantial street works).

(3) The provisions of the 1991 Act mentioned in paragraph (4) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under those provisions apply (with all necessary modifications) in relation to any temporary closure under the powers conferred by article 19 (temporary closure of streets), whether or not the temporary closure constitutes street works within the meaning of that Act—

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

- (a) section 54 (advance notice of certain works), subject to paragraph (6);
- (b) section 55 (notice of starting date of works), subject to paragraph (6);
- (c) section 57 (notice of emergency works);
- (d) section 59 (general duty of street authority to co-ordinate works);
- (e) section 60 (general duty of undertakers to co-operate);
- (f) section 68 (facilities to be afforded to street authority);
- (g) section 69 (works likely to affect other apparatus in the street);
- (h) section 75 (inspection fees);
- (i) section 76 (liability for cost of temporary traffic regulation); and
- (j) section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

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

(6) Nothing in article 22 (construction and maintenance of new, altered or diverted streets)—

- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act;
- (b) means that the undertaker is by reason of any duty under that article to maintain a street or to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (c) has effect in relation to maintenance works which are street works within the meaning of the 1991 Act, as respects which the provisions of Part 3 of the 1991 Act apply

Permanent stopping up of streets, change of status, and extinguishment of private means of access

16.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development:

- (a) stop up each of the streets and extinguish each private means of access specified in column (2) of Parts 1 and 2 of Schedule 10 (streets to be permanently stopped up, changed in status or private means of access extinguished) to the extent specified, by reference to the letters and numbers shown on the rights of way plans, in column (3) of those Parts of that Schedule, and
- (b) change the status of each of the streets specified in column (2) of Part 3 of Schedule 10 to the extent specified, by reference to the letters and numbers shown on the rights of way plans, in column (3) of that Part of that Schedule, to the new status specified in column (4) of that Part of that Schedule.

(2) No street or private means of access specified in column (2) of Part 1 of Schedule 10 will be wholly or partly stopped up or extinguished under paragraph (1)(a) unless—

- (a) the new street or private means of access to be substituted for it, which is specified in column (4) of that Part of that Schedule is open for use and, in the case of a street, has been completed to the reasonable satisfaction of the street authority or, in the case of a footpath created pursuant to article 17 (status of public rights of way created or improved), to the standard specified in a public rights of way implementation plan; or
 - (b) a temporary alternative route for the passage of such traffic as could have used the street or private means of access to be stopped up between the commencement and termination points for the stopping up of the street or extinguishment of the private means of access is first provided and, in the case of a street, is subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, until the completion and opening of the new street in accordance with sub-paragraph (a).
- (3) No street specified in column (2) of Part 3 of Schedule 10 may be changed in status unless—
- (a) it has been completed to the reasonable satisfaction of the street authority and is open for use with its new status specified in column (4) of Part 3 of that Schedule; or
 - (b) a temporary alternative route for the passage of pedestrian users between the commencement and termination points specified in column (3) of Part 3 of that Schedule is first provided and is subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, until the completion and opening of the street with its new status in accordance with sub-paragraph (a).
- (4) Where the undertaker provides a substitution under paragraph (2), or the status of the highway is changed under paragraph (3), the new or temporary alternative street or private means of access is not required to be of a higher standard than the stopped up street or extinguished private means of access in column (2) of Part 1 of Schedule 10 or the highway prior to its change of status provided for in Part 3 of Schedule 10.
- (5) No street specified in column (2) of Part 2 of Schedule 10 will be wholly or partly stopped up under this article unless at least one of the conditions specified in paragraph (6) is satisfied in relation to all the land which abuts on either side of the street to be stopped up or private means of access to be extinguished.
- (6) The conditions referred to in paragraph (5) are that—
- (a) the undertaker is in possession of the land; or
 - (b) there is no right of access to the land from the street concerned; or
 - (c) there is reasonably convenient access to the land otherwise than from the street concerned; or
 - (d) the owners and occupiers of the land have agreed to the stopping up.
- (7) Where a street has been stopped up under this article—
- (a) all rights of way over or along the street or private means of access are extinguished; and
 - (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street or private means of access as is bounded on both sides by land owned by the undertaker.
- (8) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article will be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.
- (9) This article is subject to article 43 (apparatus and rights of statutory undertakers in stopped up streets).

Status of public rights of way created or improved

17. With effect from the date on which the highway authority has confirmed that the public rights of way specified in column (2) of Schedule 11 (Status of public rights of way created or improved) have been created or improved to the standard specified in a public rights of way implementation plan, the public rights of way in question will be deemed to have the status specified in column (3) of that Schedule.

Benefit of permanent private means of access and private rights of way created

18.—(1) Where the undertaker extinguishes a private means of access or private rights of way by virtue of article 16 (permanent stopping up of streets, change of status, and extinguishment of private means of access) or article 33 (private rights of way), or where the undertaker considers it necessary in order to facilitate access to land by land owners who would otherwise be prejudiced by the authorised development, the undertaker may create private means of access or private rights of way over land within the permanent limits without acquiring such land.

(2) Paragraph (1) is without prejudice to the requirement under article 21(1)(b) for the approval of the street authority after consultation with the highway authority under article 21 (access to works) to form and lay out means of access or improve means of access in certain cases.

(3) A new private means of access or private right of way will be created by virtue of this article 28 days after service of notice by the undertaker on all owners and occupiers of the affected land, specifying—

- (a) the location of the new private means of access or private right of way; and
- (b) the benefitted land

and the undertaker will as soon as possible following the creation of such private means of access or private right of way inform all owners and occupiers of the benefitted land.

(4) Unless otherwise specified by the undertaker in the notice served pursuant to paragraph (3), the new private means of access or private right of way created will include the right to pass and re-pass on foot, with livestock, with vehicles, and with plant and machinery.

(5) Without prejudice to the generality of paragraph (1), the private means of access or private right of way specified in column (3) of Schedule 12 (Benefit of permanent private means of access and private rights of way created) affecting the Land Registry title specified in column (2) of that Schedule may be created for the benefit of the land with the Land Registry title specified in column (1) of Schedule 12 by service of notice under this article on all owners and occupiers of the land with the Land Registry title specified in column (2) of Schedule 12.

(6) Any person who suffers loss by the creation of a permanent private means of access or private right of way under this article will be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) In this article—

- (a) “affected land” means the land over which the route of the new private means of access or new private right of way will be situated; and
- (b) “benefitted land” means the land for whose benefit the new private means of access or new private right of way is created.

Temporary closure of streets and private means of access

19.—(1) The undertaker, during and for the purposes of carrying out or operating the authorised development, may temporarily close, alter or divert any street or private means of access and may for any reasonable time—

- (a) divert the traffic from the street and prevent access via the private means of access; and

- (b) subject to paragraph (3), prevent all persons from passing along the street.
- (2) Without limiting the scope of paragraph (1), the undertaker may use as a temporary working site any street or private means of access which has been temporarily closed, altered or diverted under the powers conferred by this article.
- (3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary closure, alteration or diversion of a street under this article if there would otherwise be no such access.
- (4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily close, alter or divert the streets specified in column (2) Part 1 of Schedule 13 (Streets and private means of access to be temporarily closed) to the extent specified, by reference to the letters and numbers shown on the Rights of Way Plans, in column (3) of that Schedule, and may provide a temporary diversion.
- (5) The undertaker must not temporarily close, alter or divert—
- (a) any street specified as mentioned in paragraph (4) without first consulting the street authority; and
 - (b) any other street without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld.
- (6) No street or private means of access specified in column (2) of Part 2 of Schedule 13 (Streets and private means of access to be temporarily closed) may be wholly or partly closed under this article unless—
- (a) the new temporary street or temporary private means of access to be substituted for it, which is specified in column (4) of that Part of that Schedule, is open for use, and in the case of a street, has been completed to the reasonable satisfaction of the street authority; or
 - (b) an alternative temporary route for the passage of such traffic as could have used the street or private means of access to be temporarily closed between the commencement and termination points for the temporary closure of the street or private means of access is first provided and, in the case of a street, is subsequently maintained by the undertaker to the reasonable satisfaction of the street authority until the opening of the new temporary street in accordance with sub-paragraph (a) or the re-opening of the street temporarily closed.
- (7) Where the undertaker provides a temporary diversion under paragraph (4), the new or temporary alternative route is not required to be of a higher standard than the temporarily closed street or private means of access in column (2) of Part 1 or Part 2 of Schedule 13.
- (8) Prior to the reopening of any street or private means of access temporarily closed under paragraphs (4) or (6), the undertaker must remove all temporary works and restore the street or private means of access to its previous condition.
- (9) 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 the case of dispute, under Part 1 of the 1961 Act.
- (10) If a street authority that receives an application for consent under paragraph (5)(b) fails to notify the undertaker of its decision within 56 days of receiving the application, that street authority will be deemed to have granted consent.

Use of private roads for construction

20.—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction of the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

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

Access to works

21.—(1) The undertaker may, for the purposes of the authorised development—

- (a) form and lay out means of access, or improve existing means of access identified on the Rights of Way Plans; and
- (b) with the approval of the street authority after consultation with the highway authority (such approval not to be unreasonably withheld), form and lay out means of access or improve existing means of access at such other locations within the Order limits as the undertaker reasonably requires.

(2) If a street authority that receives an application for approval under paragraph (1)(b) fails to notify the undertaker of its decision within 56 days of receiving the application, that authority will be deemed to have granted approval.

Construction and maintenance of new and altered streets

22.—(1) Any street to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and must, unless otherwise agreed between the undertaker and the highway authority, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered part of the street must, when completed to the reasonable satisfaction of the highway authority, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway 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), the court will 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.

Agreements with street authorities

- 23.—(1) A street authority may enter into agreements with the undertaker in respect to—
- (a) the construction of any new street authorised by this Order;
 - (b) any stopping up, alteration or diversion of a street authorised by this Order;
 - (c) the maintenance of the structure of any viaduct, underpass, overpass or bridge carrying a street over or under any part of the authorised development;
 - (d) the carrying out in the street of any of the works referred to in articles 13 (power to alter layout, etc., of streets) or 14 (street works); and
 - (e) such works as the parties may agree.
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
 - (b) specify a reasonable time for the completion of the works; and
 - (c) contain such terms as to payment and other matters as the parties consider appropriate, including such matters as may be included in agreements made pursuant to section 278 or section 38 of the 1980 Act.
- (3) The undertaker will not commence Work Nos. 1A(k), 1B, 1C, 9(b), 10(b), 11, 12, 13(b), 14, 15, 16 or 17, or the rail-related works to the extent they involve works to a highway, prior to entering into an agreement pursuant to paragraph (1) which provides details of the specification of the works which will reasonably satisfy the highway authority for the purpose of article 22(1) or article 22(2), and related provisions in relation to the maintenance and adoption of such works pursuant to that article.
- (4) In paragraph (3) “the rail-related works” means—
- (a) in relation to Work Nos. 4A and 4B, the installation and removal of Abbey Road Level Crossing, the installation and removal of Buckleswood Road Level Crossing, and the installation and removal of any diversion routes of public rights of way;
 - (b) in relation to Work No. 4C, highway works at Knodishall Lane Level Crossing, Westhouse Level Crossing, Saxmundham Road (Buckleswood Lane) Level Crossing, Buckles Wood Level Crossing, Summerhill Level Crossing and Station Road Level Crossing

Traffic regulation measures

- 24.—(1) Subject to the consent of the traffic authority in whose area the road concerned is situated the undertaker may at any time, for the purposes of the authorised development make provision, in respect of those streets specified in columns (2) and (3) of Schedule 14 (Traffic regulation measures), as to the speed limit of those streets as specified in column (4) of that Schedule.
- (2) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the traffic authority in whose area the street is situated, which consent may be subject to reasonable conditions, the undertaker may, for the purposes of or in connection with the authorised development—
- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act in so far as it is inconsistent with any prohibition, restriction or other provision made by the undertaker under this article;
 - (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
 - (c) authorise the use as a parking place of any road;

- (d) make provision as to the direction or priority of vehicular traffic on any road;
- (e) permit or prohibit vehicular access to any road; and
- (f) place traffic signs on or near a street (including on private land), subject to and in conformity with the directions issued by the Secretary of State pursuant to powers conferred by sections 64, 65 and 85 of the 1984 Act, and in particular where such traffic signs are required for the safe design, management or operation of level crossings upgraded as part of Work Nos. 4B or 4C.

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

(3) Before complying with the provisions of paragraph (4) the undertaker must consult the chief officer of police and the traffic authority in whose area the street is situated.

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

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

(5) Any prohibition, restriction or other provision made by the undertaker under paragraphs (1) or (2) has effect as if duly made by—

- (a) the traffic authority in whose area the street is situated as—
 - (i) an order under section 84 of the 1984 Act, in the case of paragraph (1); or
 - (ii) a traffic regulation order under the 1984 Act in the case of paragraph (2) (except paragraph (2)(c)); or
- (b) Suffolk County Council as an order under section 32 of the 1984 Act (power of local authorities to provide parking places) (16) in the case of paragraph (2)(c),

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject and (in the case of paragraph (2)) the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (Road traffic contraventions subject to civil enforcement)(17).

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

(7) Where the undertaker has exercised the power to impose a temporary traffic regulation order relating to speed limits on any of the specific sections of road specified in Schedule 14 (Traffic regulation measures) under the heading 'Temporary traffic regulation measures', the undertaker must change that speed limit back to the speed limit which applied immediately before the temporary traffic regulation order came into force after the relevant work associated with the temporary traffic regulation order has been decommissioned.

(16) 1984 c. 27. Section 32 was amended by sections 1, 2 and 8(1) and paragraph 4(6)(d) of Schedule 5 to the Local Government Act 1985 (c. 51) and section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act.

(17) 2004 c. 18. Schedule 7 was amended by S.I. 2013/362 and S.I. 2018/488. There are other amendments made to the Traffic Management Act 2004 which are not relevant to this Order.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

25.—(1) Subject to paragraphs (2) and (3), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation 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) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs, and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld or delayed.

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

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld or delayed; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(4) Where the person to whom the watercourse, sewer or drain belongs receives an application for consent under paragraph (2) or approval under paragraph (3)(a) and fails to notify the undertaker of its decision within 28 days of receiving an application, that person will be deemed to have granted consent or given approval, as the case may be.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river, save where such damage or interference is required for the purpose of carrying out Works authorised under this Order.

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

(7) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) will be determined as if it were a dispute under section 106 of the Water Industry Act 1991 (Right to communicate with public sewers)(**18**).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker; and
- (b) except as provided in article 2 (interpretation), other expressions used both in this article and in the Water Resources Act 1991(**19**) have the same meaning as in that Act.

(9) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016(**20**).

(18) 1991 c. 56. Section 106 was amended by section 35(8)(a) and 43(2) and paragraph 1 of Schedule 2 of the Compensation and Service (Utilities) Act 1992 (c. 43) and sections 36(2) and 99 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). There are other amendments to this section which are not relevant to this Order.

(19) 1991 c. 57.

(20) S.I. 2016/1154.

Protective work to buildings

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

(2) Protective works may be carried out—

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

(3) For the purpose of determining how the functions under this article are to be exercised, the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage, and place on, leave on, and remove from the building any apparatus and equipment for use in connection with the survey.

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

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

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter and survey any building and any land within its curtilage and place on, leave on or remove any apparatus or equipment;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

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

(6) Where a notice is served under paragraph (5), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 84 (Arbitration).

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

(8) Where—

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

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

(9) Nothing in this article will relieve the undertaker from any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance).

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

(11) Subject to paragraph (6), section 13(21) (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125(22) (application of compulsory acquisition provisions) of the 2008 Act.

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

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

Authority to survey and investigate the land

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

(2) No land may be entered or equipment placed on, 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, such notice must indicate the nature of the survey or investigation that the undertaker intends to carry out.

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

- (a) must, if so required on entering the land, produce written evidence of 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 will be made under this article—

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

but such consent must not be unreasonably withheld or delayed.

(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

(21) As amended by sections 62(3) and 139(4)-(9) of, paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 223 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(22) As amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

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

(6) If either a highway authority or street authority which has received an application for consent under paragraph (4) fails to notify the undertaker of its decision within 28 days of receiving the application, that authority is deemed to have granted the consent.

(7) Section 13 (Refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

PART 5

POWERS OF ACQUISITION AND POSSESSION OF LAND

Compulsory acquisition of land

28.—(1) The undertaker may—

- (a) acquire compulsorily so much of the land within the permanent limits as is required for the construction, operation or maintenance of the authorised development or to facilitate it, or as is incidental to it; and
- (b) use any land so acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the undertaking.

(2) This article is subject to article 31 (time limit for exercise of authority to acquire land compulsorily), article 32 (compulsory acquisition of rights and imposition of restrictive covenants), article 35 (acquisition of subsoil and airspace only), article 38 (rights under or over streets), article 39 (temporary use of land for carrying out authorised development), article 87 (crown rights) and Schedule 19 (protective provisions).

Compulsory acquisition of land – incorporation of the mineral code

29. Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981 (Minerals) are incorporated in this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated; and
- (b) for “the acquiring authority” substitute “the undertaker”; and
- (c) for “undertaking” substitute “authorised development”.

Statutory authority to override easements and other rights

30.—(1) The carrying out or use of development authorised by this Order and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

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

(2) The undertaker shall pay compensation to any person whose land is injuriously affected by—

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

authorised by virtue of this Order and the operation of section 158 of the 2008 Act.

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

(4) Subsection (2) of section 10 of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act applies to the construction of paragraph (2) (with any necessary modifications).

Time limit for exercise of authority to acquire land compulsorily

31. After the end of the period of five years beginning on the day on which this Order is made—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the 1981 Act as applied by article 34 (application of the 1981 Act),

in relation to any part of the Order land.

Compulsory acquisition of rights and imposition of restrictive covenants

32.—(1) Subject to paragraph (2) the undertaker may acquire compulsorily such rights over the land within the permanent limits or impose restrictive covenants affecting that land as may be required for any purpose for which that land may be acquired under article 28 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (2) of Schedule 15 (land in respect of which only rights etc may be acquired), the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of such restrictive covenants as may be required for the purpose specified in relation to that land in column (3) of that Schedule.

(3) Subject to section 8 of the 1965 Act (Provisions as to divided land), as substituted by article 36 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.

(4) Schedule 16 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) In any case where the acquisition of rights or imposition of a restrictive covenant under paragraph (1) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights or impose restrictive covenants to the statutory undertaker in question.

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

Private rights of way

33.—(1) Subject to the provisions of this article, and article 16 (permanent stopping up of streets, change of status, and extinguishment of private means of access) insofar as it relates to private means of access, all private rights of way over land subject to compulsory acquisition under this Order are extinguished—

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

whichever is the earlier.

(2) Subject to the provisions of this article, and article 16 insofar as it relates to private means of access, all private rights of way over land owned by the undertaker which, being within the Order limits, is required for the purposes of this Order are extinguished on the appropriation of the land by the undertaker for any of those purposes.

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

(4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article will be entitled to compensation in accordance with section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (Extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or where article 42 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land,
- (ii) the undertaker's appropriation of it,
- (iii) the undertaker's entry onto it, or
- (iv) the undertaker's taking temporary possession of it,

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

(b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.

(7) Where an agreement referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right of way is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

(8) This article does not apply to any loss suffered under article 16.

Application of the 1981 Act

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

(2) The 1981 Act, as applied, has effect with the following modifications.

(3) In section 1 (application of act) for subsection (2) substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.

(4) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.

- (5) Omit section 5A(23) (time limit for general vesting declaration).
- (6) In section 5B(24) (extension of time limit during challenge)—
- (a) for “section 23 of the Acquisition of Land Act 1981 (Application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and
 - (b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 31 (time limit for exercise of authority to acquire land compulsorily) of the Sizewell C (Nuclear Generating Station) Order 2022”.
- (7) In section 6(25) (notices after execution of declaration) for subsection (1)(b) substitute—
- “(b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 of the Planning Act 2008.”.
- (8) In section 7(26) (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1(27) (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).
- (10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 of the 2008 Act (application of compulsory acquisition provisions) as modified by article 37 to the compulsory acquisition of land under this Order.

Acquisition of subsoil and airspace only

35.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of and the airspace over the land referred to in paragraph (1) of article 28 (Compulsory acquisition of land) or article 32 (compulsory acquisition of rights and imposition of restrictive covenants) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) Section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or factory or airspace above a house, building or factory.

(23) 1981 c. 66. Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

(24) 1981 c. 66. Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).

(25) 1981 c. 66. Section 6 was amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(26) 1981 c. 66. Section 7 was amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(27) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

Acquisition of part of certain properties

36.—(1) This article applies instead of section 8(1) of the 1965 Act (Other provisions as to divided land) (as applied by section 125 of the 2008 Act) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or factory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner is required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner is required to sell only the land subject to the notice to treat shall, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the Lands Chamber of the Upper Tribunal (“the tribunal”).

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner must sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or factory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Modification of the 1965 Act

37.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4 (Time limit for giving notice to treat) for “after the end of the period of 3 years beginning the day on which the compulsory purchase order becomes operative” substitute “after the end of the period stated in article 31 (time limit for exercise of authority to acquire compulsorily) of the Sizewell C (Nuclear Generating Station) Order 2022”.

(3) In section 4A(1)(**28**) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 31 (time limit for exercise of authority to acquire land compulsorily) of the Sizewell C (Nuclear Generating Station) Order 2022”.

(4) In section 11A(**29**) (powers of entry: further notice of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”;
- (b) in subsection (2), after “land” insert “under that provision”.

(5) In section 22(2), for “section 4 of this Act” substitute “article 31 (time limit for exercise of powers to acquire land compulsorily) of the Sizewell C (Nuclear Generating Station) Order 2022”.

Rights under or over streets

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

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

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

- (a) any subway or underground building; or

(28) 1965 c. 56. Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(29) 1965 c. 56. Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

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

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

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

Temporary use of land for carrying out authorised development

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

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (2) of Schedule 17 (land of which only temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule; and
 - (ii) any land within the permanent limits in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) and no declaration has been made under section 4(30) of the 1981 Act (execution of declaration);
- (b) remove any electric line, electrical plant, structures, apparatus, buildings and vegetation from that land;
- (c) construct temporary or permanent works comprised within the authorised development (including the provision of means of access and buildings or structures on that land);
- (d) construct any works specified in relation to that land in column (3) of Schedule 17, or any other mitigation works; and
- (e) temporarily possess any land (including land specified in Schedule 17) for the temporary diversion of vehicular traffic or the temporary diversion of public and private rights of way or private means of access where required in the exercise of powers under article 16 (permanent stopping up of streets, change of status, and extinguishment of private means of access) or article 19 (temporary closure of streets and extinguishment of private means of access), or where otherwise required to avoid prejudice to the use of land within the Order limits by land owners during construction of the authorised development.

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

(3) The undertaker must not, without the agreement of the owners of the land, remain in possession under this article—

- (a) in the case of land specified in paragraph (1)(a)(i) above, after the end of the period of 1 year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 17 unless and to the extent that it is authorised to do so by the acquisition of rights over land or the creation of new rights over land pursuant to article 32 (compulsory acquisition of rights and imposition of restrictive covenants); or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of 1 year beginning with the date of completion of the work for which temporary possession of the

(30) 1981 c. 66. Section 4 was amended by section 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).

land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must either acquire the land under paragraph (1)(a) or, unless otherwise agreed with the owners of the land, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land, except that the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) restore the land to a condition better than the relevant land was in before temporary possession;
- (d) remove any ground strengthening works which have been placed on the land to facilitate construction, maintenance and operation of the authorised development;
- (e) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or
- (f) remove or reposition any apparatus belonging to statutory undertakers or necessary mitigation works.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article and, for the avoidance of doubt, this will include compensation in respect of any loss or damage further to any ground strengthening works within paragraph (4)(d) carried out by the undertaker in or on that land.

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

(7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act⁽³¹⁾ (Compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from—

- (a) acquiring existing and new rights or imposing any restrictive covenants over any part of that land under article 32;
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 35 (acquisition of subsoil and airspace only); or
- (c) carrying out a survey of that land under article 27 (authority to survey and investigate the land).

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

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

(11) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in paragraph (1).

(31) 2008 c. 29. Section 152 was amended by S.I. 2009/1307.

(12) Nothing in this article affects any requirement for the consent of the Secretary of State to be provided for the change of use of a playing field under section 77 of the School Standards and Framework Act 1998.

Time limit for exercise of authority to temporarily use land for carrying out the authorised development

40.—(1) Subject to paragraph (2), the authority to enter onto land pursuant to article 39 (temporary use of land for carrying out authorised development) ceases to apply to any land after the period of five years beginning on the day on which the Order is made.

(2) Paragraph (1) will not prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Temporary use of land for maintaining authorised development

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

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

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

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

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

(4) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of—

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

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practicable in the circumstances.

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

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

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

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

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

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

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

Statutory undertakers

42.—(1) Subject to the provisions of Schedule 19 (Protective provisions), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers within the Order limits and described in the Book of Reference;
- (b) acquire existing rights, create and acquire new rights and impose restrictive covenants over the land belonging to statutory undertakers within the Order limits and described in the Book of Reference;
- (c) extinguish or suspend the rights of, remove, alter, renew, relocate or reposition the apparatus belonging to statutory undertakers over or within the Order limits; and
- (d) construct the authorised development in such a way as to interfere with any highway or cross underneath or over apparatus belonging to statutory undertakers and other like bodies within the Order limits.

(2) Subject to the provisions of Schedule 19 (Protective provisions), the undertaker may for the purposes of article 14 (street works) remove or reposition apparatus belonging to statutory undertakers which is laid beneath any of the streets specified in Schedule 9 (Streets subject to street works).

Apparatus and rights of statutory undertakers in stopped-up streets

43.—(1) Where a street is stopped up under article 16 (permanent stopping up of streets, change of status, and extinguishment of private means of access), any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 16, any statutory undertaker whose apparatus is under, in, on, over, along or across the street or public right of way may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the statutory undertaker may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory undertaker an amount equal to the cost reasonably incurred by the statutory undertaker in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street or public right of way; and

- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.
- (4) If in the course of the execution of relocation works under paragraph (2)—
 - (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; 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 to be necessary, then, if it involves cost in the execution of the relocation works 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 paragraph, would be payable to the statutory undertaker by virtue of paragraph (3) will be reduced by the amount of that excess.
- (5) For the purposes of paragraph (4)—
 - (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
 - (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.
- (6) An amount which, apart from this paragraph, would be payable to a statutory undertaker in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility 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.
- (7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—
 - (a) the allowable costs of the relocation works are to be determined in accordance with section 85 of that Act (Sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
 - (b) the allowable costs must be borne by the undertaker and the statutory undertaker in such proportions as may be prescribed by any such regulations.
- (8) In this article—
 - “relocation works” means work executed, or apparatus provided, under paragraph (2); and
 - “statutory undertaker” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003⁽³²⁾ (Interpretation).

Acquisition of wayleaves, easements and other rights

- 44.** Schedule 18 (Acquisition of wayleaves, easements and other rights) shall have effect.

(32) 2003 c. 21. There are amendments to this Act which are not relevant to this Order.

Recovery of costs of new connections

45.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 42 (Statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 42, 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 sewage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 43 (apparatus and rights of statutory undertakers in stopped-up streets) or Part 3 of the 1991 Act applies.

(4) In this article—

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

“public utility undertaker” means a gas, water, electricity or sewerage undertaker.

No double recovery

46. Compensation will not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Protective provisions

47. Schedule 19 (Protective provisions) to this Order has effect.

Use of airspace within the Order limits

48.—(1) The undertaker may enter into and use so much of the air-space over any land within the Order limits as may be required for the construction, operation and maintenance of the authorised development and may use the air-space for those purposes or any other purposes ancillary to the authorised development.

(2) The undertaker may exercise any power conferred by paragraph (1) in relation to land without being required to acquire any part of the land or any easement or right in the land.

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

(4) Compensation is not payable under paragraph (3) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

PART 6

HARBOUR POWERS

Incorporation of the Harbours, Docks, and Piers Clauses Act 1847

49.—(1) With the exception of sections 6 to 23, 25, 27, 29, 31 to 34, 36, 40 to 50, 52, 53, 59, 60, 66 to 68, 70 to 72, 77, 79 to 82, 85 to 89, 92 and 97 to 102, the 1847 Act is incorporated in this Order subject to the modifications stated in paragraphs (2) and (10).

(2) Section 28 of the 1847 Act (exemption of vessels in her Majesty's or the public service, from rates) has effect as if the words "to charge with rates or duties, or" and the words "without any charge or rate being made for using the same" were removed.

(3) Section 35 of the 1847 Act (Masters to report arrival of vessel) has effect as if the words "liable to rates" were removed.

(4) Section 37 of the 1847 Act (Masters of vessels to give names of consignees, and accounts of goods intended to be unshipped, etc) has effect as if for the words "collector of rates" were substituted the words "harbour master".

(5) Section 39 of the 1847 Act (Shippers to give an account of goods intended to be shipped) has effect as if for the words "collector of rates" were substituted the words "harbour master".

(6) Section 62 of the 1847 Act (Penalty for wilfully cutting moorings) has effect as if for the words "level 1" were substituted the words "level 3".

(7) Section 63 of the 1847 Act (Penalty for placing, etc, vessels near the entrance of harbour or dock, etc, without permission) has effect as if the section was amended to read: "As soon as the Order comes into force, no vessel, except with the permission of the harbour master, shall lie or be moored within the harbour limits; and if the master of any vessel either places it or suffers it to remain within the harbour limits; without such permission, and does not, on being required to do so by the harbour master, forthwith proceed to remove such vessel, he must be liable on summary conviction to a fine not exceeding level 3 on the standard scale."

(8) Section 69 of the 1847 Act (Combustible matter on quays, &c., to be removed) has effect as if for the words from "shall forfeit" to the end of the section there were substituted the words "must be liable on summary conviction to a fine not exceeding level 3 on the standard scale."

(9) In construing the 1847 Act as so incorporated—

- (a) the expression "the special Act" means this Order;
- (b) the expressions "the Promoters of the undertaking" and "the undertakers" mean the undertaker;
- (c) the expression "the harbour, dock or pier" means the harbour;
- (d) the expressions "limits" and "prescribed limits" mean the harbour limits;
- (e) the expression "near the pier" does not extend beyond the harbour limits;
- (f) the expression "the harbour master", in relation to the harbour, has the meaning given by article 2 (interpretation); and
- (g) the definition of "vessel" in article 2(1) of this Order is substituted for the definition in section 3 of the 1847 Act (Interpretation).

(10) Section 84 of the 1847 Act (Byelaws may be enforced by imposition of penalties) has effect as if the words "being limited to a summary conviction, and" were inserted between the words "shall think fit" and "not exceeding".

Further powers as to works and extinguishment of rights

50.—(1) The undertaker may, in connection with the construction of the marine works—

- (a) enclose or reclaim from the foreshore and bed of the sea; and
- (b) hold and use as part of the marine works,

so much of the foreshore and bed of the sea as is situated within the limits of Work Nos. 2B, 2D, 2F, 2H, 2J and 2K as shown on the Works Plans and is required for, or in connection with, the construction of the marine works.

(2) As soon as the undertaker exercises the powers under paragraph (1), any right of navigation or other public rights over the part of the sea and the foreshore in respect of which it exercises those powers will be extinguished.

Harbour authority

51.—(1) The undertaker is the harbour authority in respect of the harbour.

(2) Without prejudice to any provision of the 1847 Act as incorporated in this Order by article 49 (incorporation of the Harbours, Docks, and Piers Clauses Act 1847), the area within which the harbour authority may exercise its functions under this Order must be the harbour.

Agreements entered into by the undertaker

52. Any agreement or undertaking entered into by the undertaker before the coming into force of this Order in connection with the proposed exercise of its function as harbour authority must be binding upon the harbour authority notwithstanding that it was entered into by the undertaker before it was established as a harbour authority by article 51 (harbour authority).

Application of Pilotage Act 1987

53. The undertaker is a competent harbour authority in respect of the harbour for the purposes of the Pilotage Act 1987(33).

Limits of harbour

54.—(1) The limits of the harbour within which the undertaker is permitted to exercise jurisdiction as the harbour authority and within which the powers of the harbour master are exercisable are the seaward and the landward areas described in Schedule 20 (Limits of harbour), as shown edged by a green broken line on the Works Plans.

(2) In the event that there is any discrepancy between the description of the seaward area in Schedule 20 and the area shown on the Works Plans, the description in Schedule 20 will prevail.

Obstruction of work

55. Any person who—

- (a) intentionally obstructs any person acting under the authority of the undertaker in setting out the lines of the harbour limits, or in constructing, Work No. 1A(l) permanent beach landing facility) or Work No. 1A(aa) (temporary marine bulk import facility); or
- (b) without reasonable excuse interferes with, moves or removes any pole, stake, station point or bench mark or equipment used in the construction, maintenance or use of the harbour, including Work No. 1A(l) (permanent beach landing facility) or Work No. 1A(aa) (temporary marine bulk import facility),

(33) 1987 c. 21.

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Obstruction of officers

56.—(1) Any person who—

- (a) intentionally obstructs an officer of the harbour authority or other person acting in pursuance of this Order or of any enactment relating to the harbour limits;
- (b) without reasonable excuse fails to comply with a requirement properly made by such an officer; or
- (c) without reasonable excuse fails to give such an officer any information or produce any document which the officer may require for the purpose of performance of their functions,

is guilty of an offence and liable on summary conviction of a fine not exceeding level 3 on the standard scale.

(2) Any person who, in giving such information as is mentioned in paragraph (1)(c), makes a statement which that person knows to be false, is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Nothing in paragraph (1) applies to the harbour master or to any person acting under the authority of the harbour master.

Abatement of works abandoned or decayed

57.—(1) Where a marine work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the undertaker at its own expense either to repair and restore that work or any part, or to remove that work and restore the site to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work consisting partly of a marine work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion of it, in any notice under this article.

(3) If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; and any expenditure incurred by the Secretary of State in so doing will be recoverable from the undertaker.

Survey of marine works

58. If the Secretary of State considers it expedient to do so, the Secretary of State may order a survey and examination of a marine work or of the site on which it is proposed to construct the work, and any expenditure incurred by the Secretary of State in any such survey and examination will be recoverable from the undertaker.

Lights on marine works etc. during construction

59. The undertaker must at or near—

- (a) any marine work, including any temporary work; or

- (b) any plant, equipment or other obstruction placed, in connection with any authorised development, within the area of seaward construction activity,

during the whole time of the construction, reconstruction, extension, enlargement, replacement or relaying of such work or development, exhibit every night from sunset to sunrise such lights and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

Provision against danger to navigation

60. In case of damage to, or destruction or decay of, a marine work or any part of it, the undertaker must as soon as reasonably practicable notify Trinity House and must lay down such buoys, exhibit such lights, and take such other steps for preventing danger to navigation, as Trinity House may from time to time direct.

Permanent lights on marine works

61. After the completion of a marine work the undertaker must, at the outer extremity of it exhibit every night from sunset to sunrise such lights, and take such other steps for the prevention of danger to navigation, as Trinity House may from time to time direct.

Rights to lease etc.

62.—(1) The undertaker may at any time lease or grant for the purposes of the harbour undertaking the use or occupation of, or any right or interest in, over or relating to, any lands, works, buildings, equipment or other property forming part of the harbour undertaking for such period or periods and on such terms and conditions as may be agreed between the undertaker and the person taking the same.

(2) A lease or grant made or given under paragraph (1) may include provisions delegating to the lessee or grantee any of the functions of the undertaker other than those specified in sub-paragraphs (a) to (f) of paragraph 9B of Schedule 2 to the Harbours Act 1964 (Object for whose achievement harbour revision orders may be made)⁽³⁴⁾.

(3) A person—

- (a) exercising powers conferred by this Order; or
- (b) carrying out any development under planning permission granted by article 3 (Permitted development) of, and Class B of Part 8 of Schedule 2 (Dock, pier, harbour, water transport, canal or inland navigation undertakings) to, the 2015 Order,

in pursuance of a lease or grant under paragraph (1) (“the lessee or grantee”) is subject to the same restrictions, liabilities and obligations as would apply under this Order or by virtue of any agreement or undertaking by the undertaker if those powers were exercised, or the development carried out, by the undertaker.

(4) The provisions of this Order or of any such agreement or undertaking, as respects any such exercise of powers or carrying out of development by the lessee or grantee, have effect (where the context so permits) as if any reference in those provisions to the undertaker included a reference to the lessee or the grantee, as the case may be.

Byelaws

63.—(1) The undertaker may, from time to time, make and enforce byelaws regulating the use and operation of the authorised development or the harbour, the maintenance of order on and about

(34) 1964 c. 40.

the authorised development or the harbour and the conduct of all persons including employees of the undertaker while on and about the authorised development or the harbour.

(2) Without prejudice to the generality of paragraph (1), byelaws made under this article may provide for—

- (a) regulating the use, operation and superintendence of the harbour and the berths, quays, piers, warehouses, sheds, landing places, equipment, works and conveniences (including moorings) in the harbour;
- (b) regulating the admission to, the movement within, and the departure from, the harbour of vessels, or the removal of vessels;
- (c) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods within the harbour;
- (d) regulating the berthing and mooring of vessels within the harbour;
- (e) preventing damage or injury to any goods, vehicles, plant, machinery, property or person within the harbour;
- (f) regulating the conduct of all persons within the harbour not being members of a police force or officers or servants of the Crown whilst in the execution of their duties;
- (g) regulating the placing and maintenance of moorings within the harbour;
- (h) preventing and removing obstructions or impediments within the harbour;
- (i) regulating in the harbour the use of yachts, sailing boats, sailboards, rowing boats, rowing punts, pleasure craft and other small craft;
- (j) regulating or prohibiting the activities in the harbour of divers, surfers, water skiers and other persons engaged in similar recreational pursuits but not so as to prohibit the use for navigation of the vessels referred to in sub-paragraph (i);
- (k) regulating the launching of vessels within the harbour;
- (l) prohibiting persons in or entering the harbour, or any part of the harbour, from smoking in open spaces in the harbour;
- (m) regulating the movement and parking of vehicles within the harbour;
- (n) regulating the exercise of the powers vested in the harbour master;
- (o) safety precautions to be observed by persons within the harbour, whether or not on board vessels;
- (p) the protection and conservation of flora and fauna and other natural features;
- (q) making the carrying out of specified harbour operations, or the conduct of persons in the harbour, subject to the approval (with or without conditions), control or direction of the harbour master, and for authorising the harbour master to take such action as may be reasonably required in default of compliance with any such condition, control or direction;
- (r) regulating the admission and access to the marine works forming part of the authorised development;
- (s) preventing and removing obstructions or impediments within the authorised development;
- (t) preventing damage or injury to any goods, vehicles, plant, machinery, property or persons within the authorised development; and
- (u) preventing nuisances on the authorised development or works.

(3) Byelaws made under this article may—

- (a) provide for imposing upon persons found guilty on summary conviction of offending against them, or against any condition, requirement or direction imposed, made or given under them, fines not exceeding level 3 on the standard scale;

- (b) only relate to the area of the harbour limits as described in Schedule 20 to this Order and land controlled or used by the harbour authority; and
- (c) make different provision for different parts of the harbour or in relation to different classes of vessels or vehicles.

Confirmation of byelaws

64.—(1) Byelaws made by the undertaker under this Order will not come into operation until they have been confirmed by the Secretary of State.

(2) At least 28 days before an application for confirmation of byelaws is made by the undertaker to the Secretary of State, notice of the intention to apply for confirmation and of the place at which and times during which a copy of the byelaws will be open to inspection must be published as follows—

- (a) once in each of two successive weeks in two local newspapers circulating in the district of East Suffolk Council; and
- (b) on a website managed by the undertaker.

(3) Not later than the first date on which the notice under paragraph (2) is published, the undertaker must send a copy of the notice to the Chief Executive Officer of East Suffolk Council and to the Secretary of State.

(4) During a period of at least 28 days before application is made for confirmation of the byelaws, a copy of the byelaws must be kept by the undertaker at the office of the harbour master and must at reasonable hours be open to public inspection without payment, and must be available on a website managed by the undertaker.

(5) The undertaker must supply a copy of the byelaws or of part of the byelaws to a person who applies for it on payment of a reasonable charge.

(6) During the period of 28 days after completion of the publication of any notice required by paragraph (2), any person may make in writing to the Secretary of State any objection to or representation respecting the byelaws to which the notice relates.

(7) Subject to paragraph (8), the Secretary of State may confirm the byelaws in the form submitted to the Secretary of State with such modifications as the Secretary of State thinks fit or may refuse to confirm them.

(8) Where the Secretary of State proposes to make a modification that appears to the Secretary of State to be substantial the Secretary of State must inform the undertaker and require it to take any steps the Secretary of State considers necessary for informing persons likely to be concerned with the modification, and the Secretary of State may not confirm the byelaws until such period has elapsed as the Secretary of State thinks reasonable for consideration of, and comment upon, the proposed modification by the undertaker and by other persons who have been informed of it.

(9) A copy of the byelaws when confirmed must be printed and deposited by the undertaker at the office of the harbour master and must at all reasonable hours be open to public inspection without payment, must be available on a website managed by the undertaker and a copy of the byelaws must on application be furnished to any person on payment of such reasonable sum as the undertaker may determine.

Power to make general directions to vessels

65.—(1) Subject to paragraph (3), the undertaker may give directions, or revoke or amend directions that it has previously given, for the purpose of—

- (a) designating areas which vessels are to use, or refrain from using, for movement or mooring;

- (b) requiring the master of a vessel to give to the harbour master information relating to the vessel reasonably required by the harbour master to identify the vessel, its cargo and its likely time of arrival at and departure from the harbour; and
 - (c) the protection of property, flora and fauna.
- (2) A direction under paragraph (1) may apply—
- (a) to all vessels or to a class of vessels designated in the direction;
 - (b) to the whole of the harbour and the approaches and channels leading to the harbour, or to a part designated in the direction; and
 - (c) at all times or at certain times or at certain states of the tide designated in the direction,
- and every direction given under this article must specify the extent of its application in relation to the matters referred to in sub-paragraphs (a), (b) and (c).

(3) Before giving a direction, or revoking or amending a direction previously given, under paragraph (1), the undertaker must consult the Royal Yachting Association and the Chamber of Shipping and have regard to any written representations received from them.

Publication of general directions

66.—(1) Notice of the giving of a general direction or of any amendment or revocation of a general direction must, except in case of emergency, be published by the undertaker as soon as practicable:

- (a) once in each of two successive weeks in two local newspapers circulating in the district of East Suffolk Council; and
- (b) on a website managed by the undertaker

and, if the notice relates to the giving or amendment of a direction, the notice must state a place at which copies of the direction or the amended direction (as the case may be) may be inspected and bought, and the price of the direction or amended direction (as the case may be).

(2) In an emergency, notice of the giving of a general direction or of any amendment or revocation of a general direction may be given in any manner the undertaker considers appropriate.

Power to make special directions to vessels

67.—(1) The harbour master may give a special direction under this article—

- (a) requiring any vessel anywhere within the harbour to comply with a requirement made in or under a general direction;
- (b) regulating the time at which and the manner in which any vessel must enter into, go out of, or lie in or at the harbour;
- (c) for securing that vessels move only at certain times or during certain periods;
- (d) prohibiting the mooring of vessels in any particular part or parts of the harbour;
- (e) regulating or requiring the movement, mooring or unmooring of a vessel; and
- (f) regulating the manner in which within the harbour a vessel takes in or discharges (from ship to shore or shore to ship) personnel, cargo, fuel, water, ship's stores or ballast in the harbour.

(2) A special direction may be given in any manner considered by the harbour master to be appropriate.

(3) The harbour master may revoke or amend a special direction.

Master's responsibility in relation to directions

68. The giving of a general direction under article 65 (power to make general direction to vessels) or a special direction under article 67 (power to make special directions to vessels) does not diminish or in any other way affect the responsibility of the master of the vessel to which the direction is given in relation to that vessel, persons on board, its cargo or any other person or property.

Failure to comply with directions

69.—(1) Any person who fails without reasonable excuse to comply with a general direction issued under article 65 (power to make general directions to vessels) or a special direction under article 67 (power to make special directions to vessels) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) In any proceedings for an offence under paragraph (1) it shall be a defence for the person charged to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Enforcement of special directions

70.—(1) Without prejudice to any other remedy available to the undertaker, if a special direction issued under article 67 (power to make special directions to vessels) is not complied with within a reasonable time the harbour master may, where practicable and, except in an emergency, only where 48 hours' notice has been given to the owner or person appearing to have charge of the vessel, put persons on board the vessel to carry out the direction or otherwise cause the vessel to be handled in accordance with the direction.

(2) If there is no one on board the vessel to comply with a special direction, the harbour master may proceed as if the direction had been given and not complied with; but the harbour master must not do so unless, after reasonable inquiry has been made, the master of the vessel cannot be found.

(3) Reasonable expenses incurred in the exercise of the powers conferred by this article are recoverable by the undertaker from the owner of the vessel as if they were a charge of the undertaker in respect of the vessel.

Boarding of vessels

71. Any duly authorised officer of the undertaker may, on producing if so required their authority, enter and inspect a vessel in the harbour limits—

- (a) for the purposes of any enactment relating to the harbour authority or of any byelaw relating to the harbour authority or of any direction or byelaw of the harbour authority, including the enforcement thereof; or
- (b) to prevent or extinguish fire,

but, except in an emergency, no entry must be made under this article without 48 hours' notice first having been given to the owner or the person appearing to have charge of the vessel; and the notice must have annexed to it a copy of this article.

Charges

72.—(1) The undertaker may levy charges for any services performed by it in the exercise and performance of its statutory powers and duties at the harbour.

(2) The undertaker may confer total or partial exemption from, allow rebates to or make compositions with any person with respect to, charges and may vary or extinguish any such exemption, rebate or composition.

(3) In this article “charges” means any charges other than ship, passenger and goods dues.

Use of beach landing facility and marine bulk import facility

73. The undertaker may only use the temporary marine bulk import facility (Work No. 1A(aa)) for the purposes of, or in connection with, the construction of the authorised development and may only use the permanent beach landing facility for the purposes of, or in connection with the construction, operation, maintenance and decommissioning of the authorised development.

Duration of the powers in Part 6

74.—(1) Within 28 days following completion of all works for the removal of the temporary marine bulk import facility in accordance with requirement 29, the undertaker must—

- (a) appoint, by resolution, a date on which this Part 6 (Harbour Powers) will cease to have effect, which shall be not more than 28 days after the resolution;
- (b) publish a notice containing a copy of the resolution proposed to be passed by the undertaker appointing that date in—
 - (i) Lloyd’s List newspaper or some other newspaper specialising in shipping news;
 - (ii) a local newspaper circulating in the district of East Suffolk Council; and
 - (iii) on a website managed by the undertaker.

(2) Except as provided in article 75 (saving for termination of Part 6) this Part 6 will cease to have effect on the date specified in the resolution.

Saving for termination of Part 6

75.—(1) In the article, “relevant proceedings” means any proceedings or inquiries in respect of any situation, matter, thing, happening, act, refusal, neglect or failure occurring during the period before this Part ceased to have effect in accordance with article 74 (duration of the powers in Part 6), so far as relating to the harbour or any part of the harbour, including, but without prejudice to the generality of the foregoing, proceedings for an offence committed or penalty incurred, or for recovery of expenses, rates, dues, fees or charges incurred, during that period.

(2) No relevant proceedings shall be affected by this Part ceasing to have effect, and any such proceedings or inquiries may be commenced, continued and concluded, and any decision, judgment or ruling in them may be enforced as if this Part, and any relevant general or special direction or byelaw, had not ceased to have effect.

(3) Any period of time current in relation to relevant proceedings when this Part ceases to have effect shall not be affected by its ceasing to have effect and may continue to run as if this Part, and any relevant general or special direction or byelaw, had not ceased to have effect.

Saving for Trinity House

76. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

PART 7

DEEMED MARINE LICENCE

Deemed marine licence under the 2009 Act

77. The marine licence set out in Schedule 21 is deemed to have been granted to the undertaker under Part 4 of the 2009 Act for the licensable marine activities (as defined in section 66 of the 2009 Act) set out in Part 2 of the Schedule, and subject to the conditions set out in Part 3 of the Schedule.

PART 8

MISCELLANEOUS AND GENERAL

Removal of human remains

78.—(1) In this article “the specified land” means the land within the Order limits.

(2) Before the undertaker carries out any development or works within the Order limits which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the relevant local planning authority.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

(a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or

(b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or

(c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or

(d) it is determined that the remains to which any such notice relates cannot be identified, subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be reinterred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation is to be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) is to be sent by the undertaker to the relevant local planning authority mentioned in paragraph (4).

(12) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(14) Section 25 of the Burial Act 1857 (Offence of removal of body from burial grounds)(35) does not apply to a removal carried out in accordance with this article.

Application of landlord and tenant law

79.—(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 is to prejudice 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

80. 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 for the purposes of that Act) in respect of—

- (a) the permanent development site; and
- (b) land in respect of which Work No. 1D and Work No. 1E are authorised.

Felling or lopping of trees and removal of hedgerows

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

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

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

(3) The approval of East Suffolk Council (not to be unreasonably withheld or delayed) must be obtained before the undertaker may exercise the power in paragraph (1) in respect of any tree outside the Order limits.

(4) The undertaker may, for the purposes of the authorised development—

- (a) subject to paragraph (2), remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development; and
- (b) only remove important hedgerows identified in Schedule 22 (Removal of important hedgerows) to the extent shown on the plans identified in Schedule 22.

(5) The powers conferred by paragraphs (1) and (3) remove any obligation upon the undertaker to secure any consent under the Hedgerow Regulations 1997⁽³⁶⁾ in undertaking works pursuant to paragraphs 1(a) or (b) or 4(a) or (b).

(6) Nothing in this article authorises any works to any tree subject to a tree preservation order.

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

(8) In this article “hedgerow” and “important hedgerow” have the meaning given in the Hedgerow Regulations 1997.

⁽³⁶⁾ S.I. 1997/1160, amended by section 73(2) of the Countryside and Rights of Way Act 2000 (c. 37) S.I. 2003/2155, S.I. 2006/1177, S.I. 2009/1307, S.I. 2013/755 and S.I. 2015/377.

Certification of plans, etc.

82.—(1) The undertaker must, as soon as practicable after the date on which this Order is made, submit to the Secretary of State copies of the documents and plans identified in Schedule 23 (Certified Documents) to this Order for certification that they are true copies of the documents referred to in this Order.

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

(3) Where a plan or document certified under paragraph (1)—

- (a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and
- (b) identifies the provision by number or combination of numbers and letters, which is different from the number or combination of numbers or letters by which the corresponding provision of this Order is identified in the Order as made;

the reference in the plan or document concerned must be construed for the purposes of this Order as referring to the provisions (if any) corresponding to that provision in the Order as made.

Service of notices

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

- (a) by post; or
- (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 (9), 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⁽³⁷⁾ (References to service by post) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

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

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having 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 name or by the description of “owner” or, as the case may be, “occupier” of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Paragraphs (6) to (9) apply where a person (“A”) is required or authorised to serve or send a notice or other document for the purposes of this Order on or to another person (“B”).

(6) A may serve or send the notice or other document by electronic transmission if—

⁽³⁷⁾ 1978 c. 30. There are amendments to this Act which are not relevant to this Order.

- (a) B has sent A notice that B agrees to receive that notice or document (or notices and documents of a description including that notice or document) by electronic transmission;
- (b) B has not subsequently withdrawn that agreement in accordance with paragraph (8); and
- (c) A complies with any conditions as to addressing or mode of transmission that B has specified in agreeing to receive notices or other documents by electronic transmission.

(7) If B notifies A within 7 days of receiving a notice or other document by electronic transmission that B requires a paper copy of all or any part of the notice or other document, A must provide B with such a copy as soon as reasonably practicable.

(8) B may withdraw agreement to receive a notice or document (or notices or documents of a specified description) by electronic transmission by sending a notice to that effect to A.

(9) Notice under paragraph (8) is final and takes effect on a date specified by B in the notice but that date must not be less than 7 days after the date on which the notice is given.

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

(11) In this article “electronic transmission” means a communication transmitted—

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

Arbitration

84.—(1) – Any difference under any provision of this Order, unless otherwise provided for in this Order or unless otherwise agreed between the parties, and other than a difference which falls to be determined by the tribunal or is the subject of enforcement action under Part 8 of the 2008 Act, 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 to the provisions of the 1847 Act incorporated in this Order by article 49 (incorporation of the Harbours, Docks and Piers Clauses Act 1847) or to Trinity House in the exercise of its statutory functions.

(3) This article is without prejudice to article 76 (saving for Trinity House).

(4) Any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration.

Procedure in relation to certain approvals etc.

85.—(1) Schedule 24 (Procedure for approvals, consents and appeals) is to have effect in relation to all consents, agreement or approvals granted, refused or withheld in relation to the requirements unless otherwise agreed between the undertaker and the discharging authority.

(2) The procedure set out in paragraph (1) relating to the appeal process of Schedule 24 has effect in relation to any other consent, agreement or approval required under this Order (including the requirements in Schedule 2 of this Order) where such consent, agreement or approval is granted subject to any condition to which the undertaker objects, or is refused or is withheld.

(3) Any matter for which the consent or approval of the Marine Management Organisation is required under any provision of this Order shall not be subject to this procedure.

Application, exclusion and modification of legislative provisions

86. Schedule 25 (Miscellaneous controls) to this Order, which makes provision applying, modifying and excluding statutory provisions which relate to matters for which provision may be made by this Order, has effect.

Crown rights

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

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

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in section 227 of the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and is deemed to have been given in writing where it is sent electronically.

Security in respect of the payment of compensation etc.

88.—(1) The undertaker must not exercise the powers in Part 5 (Powers of acquisition and possession of land) of this Order until—

- (a) a bond for £42 million pounds has been provided by a financial institution; or
- (b) an alternative form of security approved in writing by the Secretary of State has been provided for £42 million pounds,

in respect of the liabilities of the undertaker to pay compensation to landowners in connection with the acquisition of their land or of rights over their land or the temporary use of their land under Part 5 of this Order.

(2) The security referred to in paragraph (1)(b) may include, without limitation, any one or more of the following—

- (a) the deposit of a cash sum;
- (b) a payment into court;
- (c) an escrow account;
- (d) an insurance policy; or
- (e) a company guarantee.

(3) Security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the provider of that security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

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

(4) The undertaker is entitled to reduce the amount of security to be maintained under paragraph (1) where—

- (a) the undertaker has made a payment of compensation to a claimant under Part 5 of this Order (including payment under private treaty in lieu of the exercise of the powers under Part 5 of this Order) and provided evidence to the Secretary of State that such payment has been made; and
- (b) the Secretary of State is satisfied that the reduced amount of security proposed by the undertaker will cover the remaining liabilities to pay compensation in respect of the exercise of the powers in Part 5 of this Order.

Fiona Mettam
Director, Energy Development and Resilience
Department for Business, Energy and Industrial
Strategy

20th July 2022